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"CRIME WEEK" AT THE STATE HOUSE AND THE RESULTS

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

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(*Signed*) FRANK W. GRINNELL.

Sworn to and subscribed before me this 26th day of March, 1926.

(*Signed*) R. P. Beele,
Notary Public.

[seal]

Entered as Second-Class Matter at the Post Office at Boston.

"CRIME WEEK" AT THE STATE HOUSE.

Introductory Statement.

The public agitation in regard to our criminal law and its administration in Massachusetts which has been going on for some time was brought to the point of responsible discussion and consideration at the recent hearings before the Judiciary Committee at the State House. The hearings began on the morning of March 2 and the committee sat morning, afternoon, and evening until 1.30 P. M. on March 5.

Those who followed the proceedings feel that it was one of the healthiest and most valuable discussions in regard to the administration of justice which had taken place for many years and it is unfortunate, in view of the extent to which many recent public addresses have been broadcasted on this subject, that the whole of this discussion could not also have been broadcasted so that people all over the Commonwealth might have listened to the presentation of facts and arguments on all sides of the matter as presented during the hearings so well conducted by Senator Shuebruk, the chairman of the Committee.

While it is impossible to report here the full discussion, yet, as the substance of much of it was in print or taken stenographically, reprints of a number of these pamphlets presenting different points of view have been obtained and are here bound up together so that the bar throughout the Commonwealth may get a more completely balanced picture of the discussion than they obtained from reading the newspapers.

The list of reports and bills presented to the committee at the hearings appears below. Of these, portions of the Governor's address and of the Annual Report of the Attorney General, relating to the criminal law, were reprinted in the January number of this magazine. The first Report of the Judicial Council was reprinted in the November QUARTERLY.

In addition to the papers here collected, the Report of the Probation Commission of its investigation of the permanent results of probation (Senate 431 of 1924) which was called to the committee's attention by Mr. Herbert C. Parsons, Deputy Commissioner of Probation, was reprinted in the QUARTERLY for July, 1924. The history of probation in Massachusetts, beginning with judicial experiments by Judge Thacher in the old Boston Municipal Court between 1823 and 1843, about forty years before the statutory provisions of the '70's, will be found in "Probation as an Orthodox Common Law Practice in Massachusetts Prior to the Statutory System" in the QUARTERLY for August, 1917. The "Legislative History of a State Prison Sentence" will be found in the QUARTERLY for January, 1922, and the history of the constitutional requirement of Indictment by a Grand Jury, in the QUARTERLY for August, 1921. An extended account of "Criminal Procedure in England" prepared by Professor Keedy and Mr. John W. Lawson for the "American Institute of Criminal Law and Criminology" will be found in the QUARTERLY for May, 1920, and Professor Keedy's account of "Criminal Procedure in Scotland" in the QUARTERLY for August, 1920. F. W. G.

THE JUDICIARY COMMITTEE'S LIST FOR "CRIME WEEK."

The Daily List of Committee Hearings for March 2, 3 and 4, 1926, showed the following.

JUDICIARY, JOINT—AUDITORIUM.

Hearings at 10.30 A.M., 3.30 and 7.30 P.M

S. 1, Governor's Address. (So much as relates to a more general use by the courts of information now available and in the possession of the Probation Commission.)

S. 1, Governor's Address. (So much as relates to repealing the laws authorizing the release of prisoners by county officials.)

S. 1, Governor's Address. (So much as relates to providing that parole be given to no criminal after a second conviction of felony or crime of violence.)

S. 1, Governor's Address. (So much as relates to providing that the minimum penalty be measurably increased for violation of the statute of the General Laws (Chapter 90, Section 24) covering the misappropriation of vehicles.

S. 1, Governor's Address. (So much as relates to providing that the Governor, with the advice and consent of the Council, be given the authority to suspend at any time the operation of the parole law, in so far as it deals with the release of convicted prisoners.)

S. 1, Governor's Address. (So much as relates to providing that proper provision be made to give precedence in our courts to the trial of those accused of crimes of violence.)

S. 1, Governor's Address. (So much as relates to providing that a jail sentence be imposed upon any one convicted of carrying a concealed weapon without a permit and that such person be not permitted nominal bail.)

S. 1, Governor's Address. (So much as relates to providing that a person accused before a municipal or district court be required to choose before trial in that court between a trial without jury in the lower court and a trial by jury in the Superior Court, and that if he chooses a jury trial the proceedings be immediately transferred to the Superior Court.)

S. 1, Governor's Address. (So much as relates to providing that a person accused of crime in the Superior Court be permitted to waive jury trial.)

H. 298, Message from the Governor transmitting the first report of the Judicial Council (Public Document No. 144).

H. 907, Message from His Excellency the Governor transmitting a special report of the Judicial Council furnishing suggestions as to the best method for giving precedence to the trial of crimes of violence.

H. 1167, Message from the Governor transmitting a special report of the Judicial Council.

Pub. Doc. No. 12, Report of the Attorney General for the year ending November 30, 1925. (Except so much as relates to the elimination of useless oaths and affidavits, to the storage of unpurchased volumes of the Massachusetts Reports and to the creation of the office of official abstracter and conveyancer.)

H. 242, P. of Clarence S. Luitwieler that the powers of district courts to place complaints on file be limited.

H. 243, P. of Clarence S. Luitwieler for further legislation relative to punishment for theft of motor vehicles and relative to certain other offences against the laws relating to motor vehicles.

H. 244, P. of Clarence S. Luitwieler relative to punishment for the unlawful taking and operating of motor vehicles.

H. 245, P. of Clarence S. Luitwieler relative to entry of nolle prosequi in connection with indictments charging felony.

H. 246, P. of Clarence S. Luitwieler that the power of courts to place persons on probation be limited and relative to the arrest of persons on probation.

H. 247, P. of Clarence S. Luitwieler for legislation to limit the power of district courts to suspend sentences.

H. 303, P. of Clarence S. Luitwieler for legislation further to limit the power to release prisoners on parole.

H. 304, P. of Clarence S. Luitwieler for legislation further to limit the stay of execution after sentence has been imposed in cases where no exceptions have been allowed and no appeal taken.

H. 368, P. of Clarence S. Luitwieler for an amendment of the law relative to bail in criminal cases.

H. 369, P. of Clarence S. Luitwieler relative to the issuing of process and rendering of judgment in cases of default on recognizance.

H. 445, P. of Clarence S. Luitwieler for an amendment of the law relative to evidence of former convictions in criminal trials.

H. 446, P. of Clarence S. Luitwieler that persons convicted of any felony or other offence for which a sentence in jail or house of correction was or might have been imposed be disqualified for jury service.

S. 70, P. of John W. Haigis that penalties be provided for the larceny of fruit and other goods.

S. 71, P. of John W. Haigis for legislation to require the suspension of licenses and registrations upon conviction for a certain offence.

S. 194, P. of James J. Mulvey for legislation to make knowledge a necessary element in the offence of using a motor vehicle without authority.

H. 534, P. of Garrett H. Byrne relative to the penalty for the use of motor vehicles without authority.

H. 750, P. of John F. Barry for legislation relative to frauds in connection with the renting and hiring of motor vehicles.

H. 654, P. of Winslow W. Churchill and others that a minimum term of imprisonment for robbery when armed be established.

H. 759, P. of John I. Fitzgerald for the repeal of the law which permits the imposing of indeterminate sentences to the State Farm.

H. 760, P. of Richard J. Garvey that complaints for certain misdemeanors be tried in the absence of the defendants.

H. 935, P. of John L. Spaulding, Jr., and others for legislation to further restrict the parpling of persons sentenced to the State Prison for certain offences committed while armed.

H. 943, P. of the Massachusetts Civic Alliance for legislation to exclude from probation persons charged with or convicted of certain serious offences.

H. 946, P. of M. Shaw for an amendment of the law relative to certain orders in proceedings for desertion and non-support.

S. 80, P. of Thomas C. O'Brien that the district attorney for the Suffolk District be authorized to appoint special county police officers.

S. 204, P. of Eben W. Burnstead and another relative to the penalty for the unlawful carrying of firearms.

H. 761, P. of Richard J. Garvey for legislation to authorize the acceptance of bail without sureties of defendants charged with misdemeanors.

H. 937, P. of John I. Fitzgerald for an amendment of the law relative to appeals in certain juvenile cases.

H. 939, P. of Robert T. Bushnell relative to peremptory challenges upon the trial of indictments for crimes punishable by death or imprisonment for life.

H. 1015, P. of James M. Handrahan and another relative to the division of the Southeastern District for the administration of the criminal law.

H. 753, P. of Clarence W. Rowley relative to criminal procedure and to providing certain swift and adequate punishment for crime.

H. 507, P. of Henry A. Higgins relative to the appointment of a commission to make a survey and study of crime conditions within the Commonwealth.

HOUSE . . . . No. 1186

The Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 1, 1926.

The Committee on Rules, to whom was referred the motion to suspend Joint Rule 12 on the special report of the Attorney General relative to the administration of criminal justice in this commonwealth, report recommending that said rule be suspended.

LEVERETT SALTONSTALL,
For the Committee.

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY GENERAL
BOSTON, February 26, 1926.

To the Honorable Senate and House of Representatives.

GENTLEMEN: — I have the honor to transmit herewith a report relative to the administration of criminal justice in Massachusetts.

Very respectfully,

JAY R. BENTON,
Attorney General.

SPECIAL REPORT OF THE ATTORNEY GENERAL SUPPLEMENTARY TO HIS ANNUAL REPORT RELATIVE TO THE ADMINISTRATION OF CRIMINAL JUSTICE IN THIS COMMONWEALTH.

DEPARTMENT OF THE ATTORNEY GENERAL,
BOSTON, February 26, 1926.

To the Honorable Senate and House of Representatives:

In transmitting the annual report of the Department of the Attorney General to your honorable body on January 20th, last, I stated that it was my intention to file a special report with you in the matter of the administration of criminal justice in Massachusetts.

From time to time, various statements, purported to have been made by the Registrar of Motor Vehicles, appeared in the newspapers, reflecting upon the administration of criminal justice, generally and in specific instances, and upon the courts and various authorities concerned with that phase of the law. These charges were of so grave a character that I deemed it my duty to cause an investigation to be made. Accordingly, on December 7th, last, I requested the Registrar of Motor Vehicles to submit to me the specific cases in which he believed that there had been a miscarriage of justice, and all facts in his possession relative thereto, and all other information he could furnish me in connection therewith. On the following day I made substantially the same request upon the Police Commissioner of the City of Boston. The cases presented by these two officials totaled nearly four hundred, and related solely to the County of Suffolk.

Each of these cases was first examined by this department. It then appeared that there were eighty-six cases which were of greater importance than the others and which

merited special consideration and intensive investigation. It quickly became apparent that it would be impossible for this department alone to make such investigation of the eighty-six cases as was required in time to make a report upon all of the cases to this session of the Legislature. I, therefore, carefully selected a group of members of the Boston bar, of high standing, and requested each of them to investigate thoroughly one of the more important cases and report to me all of the facts found, together with his conclusions and any recommendations he saw fit to make. The lawyers were designated by me as special counsel and were given full authority to act in the premises. The attorneys who promptly answered this call to public service were the following:

Hon. J. Weston Allen	Newton.
James H. Baldwin, Esq.	Newton.
Charles B. Barnes, Esq.	Hingham.
Joseph W. Bartlett, Esq.	Newton.
George P. Beckford, Esq.	West Roxbury.
Stoughton Bell, Esq.	Cambridge.
Edgar P. Benjamin, Esq.	Roxbury.
William R. Bigelow, Esq.	Natick.
Charles W. Blood, Esq.	Newton.
Louis A. Boutwell, Esq.	Malden.
Bartholomew A. Brickley, Esq.	Brookline.
Lincoln Bryant, Esq.	Milton.
Charles R. Cabot, Esq.	Newton.
Albert M. Chandler, Esq.	Newton.
Hon. Frederick H. Chase	Concord.
A. Barr Comstock, Esq.	Dedham.
Robert A. B. Cook, Esq.	Wellesley.
Philip E. Coyle, Esq.	Brookline.
Charles P. Curtis, Jr., Esq.	Boston.
Hon. Elmer L. Curtiss	Hingham.
Hon. Frederick W. Dallinger	Cambridge.
Hon. Frederick S. Deitrick	Cambridge.
John H. Devine, Esq.	Lexington.
Judd Dewey, Esq.	Boston.
Joseph J. Donahue, Esq.	Brookline.
William J. Drew, Esq.	West Roxbury.
Richard C. Evarts, Esq.	Cambridge.
Elias Field, Esq.	Boston.
Fred T. Field, Esq.	Cambridge.

Felix Forte, Esq.	Somerville.
Walter H. Foster, Esq.	Belmont.
Francis G. Goodale, Esq.	Weston.
Walter B. Grant, Esq.	Dorchester.
Leon C. Guptill, Esq.	Winthrop.
John E. Hannigan, Esq.	Boston.
Arthur P. Hardy, Esq.	Malden.
Walter Hartstone, Esq.	Newton.
Hon. Arthur D. Hill	Boston.
Albert Hurwitz, Esq.	Brookline.
Harold P. Johnson, Esq.	Woburn.
Melvin M. Johnson, Esq.	Brookline.
Herman Loewenberg, Esq.	Dorchester.
John W. Lowrance, Esq.	Hingham.
Henry S. MacPherson, Esq.	Brookline.
Lloyd Makepeace, Esq.	Malden.
Hon. Frederick W. Mansfield	Roxbury.
Andrew Marshall, Esq.	Jamaica Plain.
Hon. Nathan Matthews	Boston.
Lowell A. Mayberry, Esq.	Newton.
Hon. David T. Montague	Boston.
Charles W. Mulcahy, Esq.	Brookline.
Hon. John R. Murphy	Boston.
Wendell P. Murray, Esq.	Revere.
Hon. H. Huestis Newton	Everett.
Philip Nichols, Esq.	Newton.
Fred L. Norton, Esq.	Brookline.
Hugh W. Ogden, Esq.	Brookline.
Raymond T. Parke, Esq.	Lynn.
Cornelius A. Parker, Esq.	Dorchester.
Hon. Herbert Parker	Lancaster.
Leland Powers, Esq.	Newton.
William C. Prout, Esq.	Boston.
William L. Pullen, Esq.	Newton.
Fletcher Ranney, Esq.	Boston.
William C. Rogers, Esq.	Cohasset.
Charles F. Rowley, Esq.	Brookline.
Kendall A. Sanderson, Esq.	Lynn.
John Louis Sheehan, Esq.	Brookline.
Gen. John H. Sherburne	Brookline.
Roland H. Sherman, Esq.	Winchester.
Rutherford E. Smith, Esq.	Newton.
Arthur A. Sondheim, Esq.	Brookline.
Hon. John A. Sullivan	Boston.
William B. Sullivan, Esq.	Danvers.
James F. Terry, Esq.	Weymouth.

Hon. David I. Walsh	Fitchburg.
Charles S. Warshauer, Esq.	Brookline.
Alexander Whiteside, Esq.	Boston.
Joseph Wiggin, Esq.	Malden.
Thomas L. Wiles, Esq.	Hingham.
Butler R. Wilson, Esq.	Boston.
Robert G. Wilson, Jr., Esq.	Boston.
Lothrop Withington, Esq.	Brookline.
Joseph W. Worthen, Esq.	Winchester.
Hon. B. Loring Young	Weston.

These gentlemen examined the cases entrusted to them with painstaking care, ability and commendable earnestness, and have given a great deal of time out of their private practice to the work. It has been done without compensation, and they have rendered to the Commonwealth a service of a very high order. To each of them I publicly express my sincere thanks for the service rendered.

The eighty-six more important cases that were investigated, arranged alphabetically, are as follows:

Benjamin Arndt *et al.*
Walter J. Barrett, *alias.*
Charles O. Boland.
Mary Brown and Laura Freeman.
Albert Bruno.
Anthony Bruno.
Burgess, Lang & Co.
George Byrnes.
Leo Canavo, *alias.*
Michael Catino.
George Cooper.
Jeremiah Commarata.
Thomas Conroy.
William J. Corcoran.
Antonio Correnti.
Lawrence P. Cronin.
John J. Cummings, *alias.*
Felice deNapoli.
Henry W. Derrah.
Arthur J. Desautelle and William Dondero.
John J. Devereaux.
Thomas P. Dineen.
Blair S. Dixon.

David I. Dodge.
Arthur A. Donnelly.
Leo F. Duffy.
Joseph Enos.
John Erickson.
William J. Farrell.
William Ferreirri.
Frank Ferris and Thomas Sullivan.
Joseph F. Foley.
Joseph Forti and Louis Vitozsky.
Morris Friedman.
Carl Ghella.
William Gillar.
John J. Gilmore.
Harry Gold.
Jacob Goldberg.
Frank Golding.
Nathan Goldman.
John J. Griffin.
Luigi Guarna.
Edward J. Heinlein.
Edward L. Hopkins.
Michael E. Hurley.
Rovie Johnson.
John J. Keating.
John Keller, *alias*.
John Kirby.
Joseph Lanes.
Bernard J. Logan, *alias*.
William J. Manning.
Clarence McCoy.
Leo McCue.
Joseph McGlinchey.
Theodore R. Mignault, *alias*, and Herbert J. Dugan *et al.*
Frank T. Mockler and M. Vincent Casper.
Florence Moore.
George Moore *et al.*
Carmina Morabito.
Charles Mullen.
David Namet.
Thomas Nelson.
John J. Norton.
Gabrielle Porciello.
The "Quencher" case.
John E. Radigan.
Iganzio Rair, *alias*.
Walter Reth.

Salvatore C. Rizzo.
Charles Roper.
William H. Russell.
Michael Sagesse *et al.*
Chester W. Scoyne.
Florence G. Sennott, *alias.*
G. Willis Slobodkin and Edward Clayton.
John Smith, *alias.*
Chester Snyder, *alias.*
Carl L. Stevens.
John Stewart, *alias.*
Frank J. Stone, *alias.*
Nathan Sugarman and Samuel Levine.
Syrian Democratic Club.
John M. Teehan.
Moses Zoll *et al.*

These cases have been studied by this department, the history of each case carefully analyzed and the recommendations thoroughly considered.

Certain of the investigators have recommended further action in particular cases along certain lines, and proper action will be taken by this office based upon the facts disclosed.

The remaining minor cases were investigated by the assistant attorneys general and by the police, and the greater part of them have to do with the matter of bail.

While the reports upon the cases investigated are not attached to this report, they are on file at my office, and any or all of the cases, and the reports thereon, and all records and information in connection therewith, are available to the General Court.

GENERAL FINDINGS.

The various cases investigated involved questions concerning the proper handling and disposition of cases by the district attorney's office and by the courts, various issues arising out of the admission of defendants to bail, delays in bringing defendants to trial, the placing of defendants upon probation, appropriate sentences after conviction, the release of defendants upon parole, the revocation of parole and miscellaneous matters. It should be borne in mind that

the number of cases investigated in this present inquiry is small compared with the total volume of criminal business in Suffolk County. Nor do the cases investigated, which were not selected at random but which were complained of to this department as cases in which there was a miscarriage of justice, represent a cross section of all of the cases handled by the office of the District Attorney of that county. Care should, therefore, be taken lest undue weight be given to some of the criticism leveled at the office of the District Attorney. The judgments of various men as to what constitutes a proper disposition of a case differ. It is easy to criticize after the disposition of a case and after subsequent events demonstrate that in the particular instance the disposition was not a good one from the viewpoint either of society or of the individual defendant. Hindsight is better than foresight. As the court said in Commonwealth *v.* Dascalakis, 246 Mass. 12, 27:

> Perfection cannot be demanded even if a standard of perfection could be formulated. Criticism after an adverse event is easy.

Mere errors of judgment in a small number of cases out of a large mass or mere differences of opinion as to whether a relatively small number of cases were properly handled or disposed of do not constitute sufficient ground for strikingly adverse criticism. After a very careful and intensive study of all of the cases reported to me, I do not find a case where it can be demonstrated that the District Attorney of Suffolk County, or the courts, or any official connected with the administration of criminal law acted from a corrupt or impure motive. There are cases in which some of the assistants of the District Attorney, who are no longer connected with that office, are found by the special counsel to have been lax in a vigorous enforcement of the law. In some cases the special counsel have differed from the District Attorney or from the courts in the manner of handling and disposition of cases. Of course, the special counsel have the advantage of subsequent events in assisting them to arrive at a conclusion as to what constituted a proper disposition. I believe that in the main the errors of judgment

on the part of the District Attorney's office are due to the fact that that office is considerably undermanned. The volume of business is so large that it is physically impossible for the office, with its present staff, to give to each case the time necessary for its proper consideration.

SPECIFIC FINDINGS AND RECOMMENDATIONS.

The cases inquired into fell into well-defined groups and were analyzed and studied in that way. Taking each group up in turn, I make the following findings, suggestions and recommendations.

Bail.

By far the greater percentage of the cases investigated involved issues and problems arising out of and incidental to the admission of defendants to bail. These cases indicate a certain laxness or looseness in the admission of defendants to bail in Suffolk County, a lack of cooperation between the various authorities having to do with bail and the probation and parole authorities having records of defendants, laxity in promptly securing default warrants, failure energetically to prosecute suits against sureties after default, settlement of cases against sureties for nominal amounts even though the defendants have not been apprehended prior to the settlement, and an amazing willingness to remove defaults without committing the defendant and without increasing bail even though such defendant has been defaulted in the same case time and time again. The object of bail manifestly is to insure the presence of the defendant in court when wanted. Any procedure which frequently falls short of this requirement is an indictment of the manner in which the system of bail is carried on. In my opinion, no additional legislation is necessary to remedy the situation as it apparently exists in Suffolk County at the present time. There is now ample power to handle the entire problem properly. In the light of the investigations and the facts disclosed, I make the following recommendations:

1. That before the admission to bail by bail commissioners, the arresting officer obtain, wherever possible, the record of the person arrested and submit such information

to the district attorney or assistant district attorney and the bail commissioner. By so doing the officers fixing the amount of bail will be better enabled to determine the amount of bail required in the particular instance to insure the presence of the defendant when wanted.

2. When bail is fixed in open court, the record of the defendant should be ascertained through the probation and parole authorities and other sources and submitted to the court before the amount of bail is determined.

3. That in all cases the financial condition of the persons offering themselves as sureties should be more carefully scrutinized and the question whether such sureties are good moral risks be determined.

4. Where the defendant has a bad criminal record, bail should be set at a much higher amount than is usual for the offence with which the man is charged.

5. Where the defendants are defaulted, default warrants should be asked for immediately.

6. Suits should be commenced against sureties immediately upon default.

7. Greater cooperation between authorities for the apprehension of defendants who have defaulted should be established.

8. Where defendants who have defaulted voluntarily surrender themselves, the bail should be very substantially increased unless the defendants prove that they were blameless.

9. Where defendants who have defaulted are apprehended, the default should not be removed and they should not be admitted to bail, but should be remanded to await trial, unless such defendants affirmatively demonstrate to the satisfaction of the court that the default was in no wise their own fault. Greater and more effective cooperation should be developed between the courts, the district attorney's office, police, bail commissioners, probation and parole authorities. Such cooperation, in my opinion, is absolutely essential, not only for the remedying of the situation with respect to bail problems, but also for a more effective administration of justice.

10. The cases indicate that defaults apparently are removed almost as a matter of course, and that the defendants are then admitted to bail in the same amount, and at times even upon a lesser amount. No penalty is thus attached to a default by a defendant. Such a situation obviously is unsound. It encourages defaults. It lessens respect for the administration of law. It impedes justice. The burden of proof should always be upon the defendant to satisfy the court in a competent manner that he is blameless in the default, and, unless the court is so satisfied, the defendants should be treated as recommended above. A more stringent attitude on the part of the courts with respect to defaults, the remanding to jail without bail to await trial of defendants who do not prove that they are guiltless in the matter of default, will, in my opinion, speedily eradicate this phase of the evil.

11. The custom has apparently grown up in Suffolk County of compromising suits against sureties for nominal, or practically nominal, amounts. This practice in and of itself is an inducement to defendants to default and to persons to act as sureties upon bail bonds, who otherwise would be far more careful as to the type of cases in which they appear as sureties. There seems to be no valid reason, except inability to satisfy an execution, for settling suits against sureties for less than the full amount of the bond where the defendants have been defaulted and not apprehended. I recommend that the practice herein referred to be forthwith abolished, that suits against sureties be prosecuted vigorously to a successful conclusion, that execution be obtained for the full amount of the bond, and that every effort be made to obtain full satisfaction of the execution.

Probation.

A considerable number of the more important cases investigated involved the question whether there had been an abuse of the probation system. In a number of cases, defendants, who, in the light of their criminal records, were not fit subjects for probation were time and again placed on probation. This was due in some instances to the fact

that the probation officers did not have the complete records of the defendants; in others, to the fact that the defendants under various aliases were enabled to conceal their identity and thus conceal their records also; in others, to the fact that the district attorney was not fully informed of the records; and in other cases, to the fact that the court was not fully apprised of the record of the defendant before him. There were still other cases where courts with complete records before them nevertheless placed men on probation who might be deemed unworthy of such treatment, and who had long criminal records. Under similar circumstances, great leniency has been shown in some cases to habitual offenders and men have been repeatedly placed on probation though they repeatedly violated the terms of their probation. Cold statistics or figures cannot in all cases demonstrate that the court erred in judgment. Various factors necessarily are taken into consideration in the treatment of human beings, which do not appear as a matter of record. Nevertheless, sufficient facts do appear to warrant me in making certain definite recommendations for additional legislation and for improved procedure.

That a probation system, properly administered, is, and should be, a logical and component part of our administration of criminal law, in my opinion, cannot be disputed. Since 1878 a probation officer has been attached to the criminal court in the City of Boston. For the last thirty-five years a probation officer has been attached to every police and district court in the Commonwealth. In 1898, the power to place on probation was extended to the Superior Court, and that court was given the power to appoint probation officers in every judicial district, which it promptly proceeded to do.

The need for a central clearing house for probation records was recognized in 1908, when a Commission on Probation was created, which is appointed by the Chief Justice of the Superior Court. This commission was given the power to prescribe the form of all records and of all reports from probation officers, to make rules for the registration of

reports and for the exchange of information between the courts, to provide for organization and co-operation of probation officers in the several courts, and to promote co-ordination in the probation work of the courts. Probation officers were required to transmit to the commission, in such form and at such times as it should require, detailed reports regarding the work of probation, and police officials were required to co-operate with the commission and with probation officers in obtaining and reporting information concerning persons on probation.

Beginning December 1, 1914, the Commission on Probation required probation officers in the courts of Suffolk County to send to its office every record in the criminal sessions on the day such record was incurred. On April 1, 1916, this requirement was extended to probation officers in courts whose jurisdiction adjoined Suffolk County, and, on July 1, 1924, it was extended to all of the courts of the Commonwealth. The commission now maintains in its office a file of individual cards containing the records of defendants who have been convicted. This file, I am informed, now numbers about 650,000 names. The commission is capable of functioning in a very satisfactory manner as a general clearing house for all of the courts of the Commonwealth, and seems to be capable of expansion to whatever demands may be made upon it.

While probation officers are required by the commission to report records to the commission regularly and promptly, it is manifest that a number of probation officers do not seek information from the commission for the purpose of completing their own records and enabling them to present to the court a complete and detailed record of the defendants whose cases are to be disposed of. Particularly is this true of courts and probation officers distantly removed from the County of Suffolk. It seems clear to me that courts cannot properly dispose of cases, administer just deserts to defendants and properly protect society unless they know the whole record of the defendants before them.

I therefore recommend legislation requiring probation officers to obtain from the commission whatever records are

available relative to defendants before the disposition of their cases. I further recommend that the General Court consider the advisability of legislation requiring each court to obtain from the commission, through the probation officer attached to it, the record of each defendant appearing before it before disposing of his case.

There have been a number of instances where defendants, who were on probation from one court, have appeared in other courts and have been there placed on probation or had their cases otherwise disposed of without the probation officer from the former court being informed of the subsequent proceedings. Such a situation interferes with the proper functioning of the probation system and prevents the proper treatment of such defendants. It should not be tolerated. There should be greater cooperation between the probation officers of the several courts and greater coordination of their respective activities.

I recommend the enactment of legislation requiring probation officers, when they learn that defendants in the court to which they are attached are on probation in another court, to notify forthwith the probation officer of such other court of the subsequent proceeding.

From a number of the cases it appeared that defendants were able to conceal their identity under aliases or otherwise. While it cannot always be possible to identify defendants as persons who have records and whose records are available, the number of cases in which such concealment has been successful are altogether too many. Greater stress should be laid upon placing records in such shape as to make identification of defendants more easy. I believe that considerable difficulty in this respect could be obviated if probation officers were more searching in their efforts to place identifying descriptions and marks upon the records of the individual defendants, and I so recommend.

It further appears that the records in the office of the Commission on Probation do not now contain parole records. In my opinion, it is essential for a complete system to have these records also concentrated in the Commission on Probation. If a defendant is paroled, and his parole is revoked

for its violation once or, perhaps, several times, manifestly this information is of vital importance to the court in determining whether such defendant should be placed upon probation or should be dealt with in a severe fashion for the protection of society. The absence of such records in the office of the Commission on Probation leaves the court without any information on that vital question. The statute now requires the Commissioner of Correction upon request to give at all times to the Commission on Probation and to probation officers such information as may be obtained from the records concerning prisoners under sentence or who have been released. Such requests are not regularly made.

I recommend legislation requiring the Commissioner of Correction and all parole authorities regularly and promptly to send to the Commission on Probation detailed and complete records relative to paroles of, and length of periods served in the various penal institutions by, the respective prisoners.

Parole.

Some of the cases considered dealt with the problem as to whether parole or permits to be at liberty had been granted to defendants unwisely. Here, too, judgments in specific cases differ, and the fact that a defendant subsequently and during his term of parole committed a serious felony does not, in and of itself, demonstrate that the issuance of the permit to be at liberty was unwise.

As I stated in my report of last January, parole officers "should be imbued and should act with an eye singly to the public welfare and the protection of society. They should always subordinate the welfare of the individual convicted to the welfare of society as a whole. In determining whether a convict should be released prior to the expiration of his sentence, the sole test should be whether it is to the interest of society that he be released, and such release should not be granted unless the answer to that question is in the affirmative."

This necessarily involves a searching examination and study of each case before the prisoner is paroled. To enable such authorities properly to act, they should have before them all available records of the prisoner.

I recommend that all parole authorities before acting in any individual case utilize the facilities afforded by the Commission on Probation for the purpose of obtaining the detailed and complete record of the prisoner. I further recommend active cooperation in each instance between the parole and probation authorities.

I have already referred to the submission by parole authorities of their records to the Commission on Probation. In a number of instances it appears that paroled prisoners during the period of parole appear before the courts as defendants, and the parole authorities are not notified. Unless the parole authorities happen to obtain this information, the fact that the paroled prisoner has committed another crime is unknown to them and the parole is consequently not revoked.

I therefore recommend the enactment of legislation requiring probation officers forthwith to notify the proper parole authorities whenever it appears that a paroled prisoner, during the period of his parole, is before the court to which they are attached.

Disposition of Cases.

I have already referred to the question whether there has been maladministration in the disposition of cases by the courts or by the district attorney's office. There has unquestionably been a number of cases in which there seems to have been an improper disposition by the courts or by the district attorney's office, although there is no evidence that this was due to improper motives or sinister influence. In some cases, habitual and persistent offenders have been repeatedly placed on probation or fined or given small terms of imprisonment. In some cases undue leniency seems to have been shown to habitual offenders and to men with bad criminal records. A nol prossing of some cases indicates poor judgment or insufficient consideration with respect to those cases. This applies as well to the filing of some cases. Repetition of such instances will, in my opinion, to a certain extent be avoided if the suggestions and recommendations I herein make are carried out and followed. If the number of assistants to the district attorney of Suffolk

County were increased, it would be possible for that office to give more attention to each individual case, and thereby more effectively assist in the administration of the law.

There ought to be more effective cooperation between the district attorney's office and the police, particularly the arresting or complaining officers, and the probation officers. I believe that no disposition ought to be made of a case by the district attorney, and no recommendation ought to be made by him to the court as to the amount of bail, the reduction of bail or the disposition of a case until that office has obtained from the arresting or complaining officers and the probation officers all the information available relative to the case under consideration and the record of the defendant. Through such cooperation the cases where defendants are released on insufficient bail or have their cases filed or nol prossed, or are placed on probation, or are given fines, or short sentences, where such disposition is an improper one, would be reduced to a minimum. Such cooperation should extend to all officials in any way concerned with the administration of the criminal law.

The system now in vogue with respect to handling of indictment warrants appears to be somewhat lax. The district attorney apparently makes no attempt to see to it that the warrants are duly issued, placed in the hands of the proper officers and served. The issuance of indictment warrants and the placing of them in the hands of the officers is left entirely to the clerk of the court. In my opinion the supervision of indictment warrants should rest upon the district attorney's office.

I recommend that the district attorney's office see to it that such warrants are properly issued, that they are placed in the hands of the proper officers, and that he keep in touch with the police for the purpose of having the defendants apprehended as speedily as possible.

Respect for the courts is essential in a proper administration of justice. Defendants who are defaulted should, wherever possible, be apprehended and brought before the court, regardless of what the proper disposition of their cases should be. For that reason an indictment should, in

my opinion, never be nol prossed where the defendant has been defaulted and has not been brought before the court subsequent to such default.

It has been brought to my attention that in at least one instance examination of the Government's case and the Government's witnesses had been held by the district attorney in the presence of the defendant or of his witnesses or counsel. Such a practice manifestly affords an opportunity to defendants and their witnesses or to unscrupulous counsel to manufacture testimony to meet the Government's case, and in that manner hampers the proper administration of justice.

I recommend that the examination of the Commonwealth's witnesses should never be held in the presence of the defendant, his witnesses or his counsel.

In one instance, a defendant with a bad criminal record was held in jail to await the action of the July grand jury. To suit the convenience of the arresting officer the case was presented to the grand jury in June, and secret indictments were returned. The clerk of the Superior Court at that time had no notice that the defendant was then confined in jail. In July, the papers from the Municipal Court, where the defendant had been held for the grand jury, were forwarded to the clerk of the Superior Court, and in the usual course submitted to the district attorney. Because of the June indictments the grand jury, for the purpose of clearing the record, returned no bills upon the papers sent up from the lower court. When the papers with the notations of "no bills" were returned to the clerk, the latter, not having his attention called to the fact that the June indictments applied to the same defendant, in the usual course notified the keeper of the jail that no bills had been returned, and the defendant was released. This, although an isolated case, illustrates the danger of departing from the usual routine without notification to other officials having to do with the same matter.

A repetition of such an incident could be avoided if, whenever there was a contemplated departure from the usual routine in the procedure with respect to criminal

cases, all officials in any way concerned with the case or with the custody of the defendant were notified of the contemplated action, and I so recommend.

There was a suggestion that in some cases applications for search warrants for intoxicating liquors were made in open court. Such a practice, in my opinion, should never be indulged in. If publicity is given to the fact that a warrant is desired to search certain premises, by making the application in open court, manifestly the persons whose premises are to be searched may be given notice of the proposed search and take steps to defeat the ends of justice.

I recommend that search warrants should never be applied for or considered in open court, but that such application should always be made to the court in chambers.

Delay in Trials.

In my previous report I pointed out the manner in which delay in bringing defendants to trial vitally hampers an effective administration of the criminal law and hinders the protection of society from the criminal elements. One of the causes of delay is the repeated and numerous continuances granted to the same defendants. There is an old saying that "three continuances are equal to an acquittal."

In many of the cases it appears that continuances have for one reason or another been repeatedly granted. While continuances cannot be altogether avoided, due to a variety of causes, I am of the opinion that they can be considerably reduced by a more stringent attitude on the part of the district attorney and the courts. Repeated continuances involve delay in bringing defendants to trial, usually work in favor of the defendants, and hamper the administration of justice. They ought not be granted as a matter of favor. They should be allowed only for good and sufficient cause. Another cause of delay is the ease with which defaults are removed. I have above pointed out this evil. Defendants who desire trial postponed can, under the present practice, secure delay by the simple process of defaulting and having the default subsequently removed. This process can be repeated again and again. I have already suggested the remedy therefor.

Abolition of Double Trials for Minor Offences.

A further important cause of delay is the congestion of the court docket due to the large number of cases appealed from the lower courts to the Superior Court. Under our present system, a defendant in a criminal case is entitled to two trials, one in the lower court and one, upon appeal, in the Superior Court. In important cases defendants frequently do not present their defence at all, but rest upon the presentation of the government's case, and, if convicted, appeal. The sole effect of a trial in the district court in such cases is to expose the whole of the government's case to the defendant and to enable him to prepare his defence accordingly. In the larger number of cases, defendants dissatisfied with the sentences of the district court appeal solely because of the knowledge that the docket of the Superior Court is so congested that it is impossible to try all of the cases, and that they accordingly will be able to trade with the district attorney or the Superior Court and frequently obtain a lighter sentence. There is no valid reason for affording a defendant two trials in the same case, thus not only giving him his day in court once but twice.

The recommendation of the Judicial Council now before you for the election of jury trial in the Municipal Court of the City of Boston and review of sentences there imposed has my support. I also go a step further. I believe that defendants in the district courts of the Commonwealth as well as in the Municipal Court of the City of Boston should be required to elect whether they will stand trial in those courts, waiving trial by jury, or whether their cases shall be sent to the Superior Court for jury trial without trial in the lower court. The suggested change will require, of course, provision for the correction of errors of law in trials in the lower courts; but the machinery would appear to be available in the appellate division of the Municipal Court of the City of Boston and in the newly created appellate division of the district courts of the Commonwealth.

PRECEDENCE TO THE TRIAL OF CRIMES OF VIOLENCE.

Seventy-one years ago the Legislature provided that a certain class of cases should be given precedence. The statute has been added to from time to time so that today the following classes of cases have to be tried first, in this order: cases of persons in jail; petitions for writ of habeas corpus; cases involving violations of the liquor law; cases involving common nuisances; cases involving desertion, non-support and bastardy.

All the district attorneys have found that this statute has in many instances effectually blocked them from trying very important criminal cases which ought to have been tried at once. In 1923 and 1924 the attorney general, at the instance of the district attorneys, recommended that this situation be corrected. The recommendation read as follows: —

> G. L. Chap. 212, Section 24, provides that certain cases shall have precedence in the order of trial next after the cases of persons who are actually confined in prison and awaiting trial. The district attorneys are thereby prevented for extended periods from trying any cases except those given precedence by the statute, and certain classes of offences are barred from trial. Not infrequently, important cases, which for special reasons should be tried, are postponed for long intervals. I recommend that the section be so amended as to provide that the court shall have discretion to modify the order of trial if in its opinion there is sufficient ground for so doing.

On January 20 last the Governor transmitted to the General Court a Special report of the Judicial Council containing suggestions as to the best method of giving precedence to trials of crimes of violence. This recommendation is contained in House document No. 907.

I recommend that a law be enacted so that, in the discretion of the court, the order of trial may be modified in order that any important criminal case, when occasion demands, may be tried without delay.

IMPEACHMENT OF WITNESSES BY THE INTRODUCTION OF PRIOR CONVICTIONS.

G. L., c. 233, § 21, provides for the impeachment of witnesses by the introduction of prior convictions. This

statute should be amended to allow the Commonwealth to show prior offences for which the defendants have been placed on probation, given suspended sentences or had the cases filed. The statute uses the word "conviction." The Supreme Court, in days long gone by, so construed the term "conviction" that the Commonwealth cannot introduce records showing that defendants have been time and again placed on probation for the precise offence for which they are now being tried.

A specific case, typical of many cases, will illustrate the need for such amendment. Three young men were on trial for robbery. They had been doing little else for a number of years. They had always "gotten away with it." Time after time, for breaking and entering, carrying weapons, etc., they had either pleaded or been found guilty and had their cases filed, placed on probation or their sentences suspended. All took the witness stand in their own defence. All had an alibi defence. They were positively identified by the victim of the hold-up, and admitted, after their acquittal, that they were guilty.

The principal argument of their attorneys was that here were three young men starting out in their lives, who had never been convicted before, and they argued that if there had been any prior conviction, the Commonwealth would have shown it. The judge was obliged to charge the jury that the Commonwealth *could* introduce records of prior "convictions." The jury acquitted the defendants, following this line of argument.

After they were acquitted, the probation officer showed the jury the records. The jurymen were appalled and incensed, believing that they had been duped by the court and the law, and stated that their verdict of not guilty was based upon the fact that the defendants had not been convicted before.

There is no sound argument against the Commonwealth being allowed to show *all of the facts*, concerning the defendants, to impeach their testimony. This raises no constitutional question. The statute can be amended specifically defining "conviction" as including any action which

any court has finally taken on the case, such as probation, filing and suspended sentences.

There are constant miscarriages of justice as a result of this old definition of "conviction," where juries are actually prevented from learning the true facts which would tend to impeach the testimony of witnesses.

District Judges sitting in the Superior Court.

In previous reports the Attorney General and the several District Attorneys have given their full support to the enactment of legislation which authorized the chief justice of the Superior Court to call up justices of the district courts to sit in the Superior Court and try cases of misdemeanors, except conspiracy and libel, with juries. In 1924 we recommended that their jurisdiction be properly increased, and this was done. The District Attorneys have found this act of great assistance in enabling them to clear up cases pending in their offices, and they all, with a single exception, are of the opinion that the statute, St. 1923, c. 469, amended by St. 1924, c. 45, should not be allowed to lapse on July 1st, next.

Waiver of Jury Trial in the Superior Court in Criminal Cases.

The recommendation of the Judicial Council that defendants in criminal cases in the Superior Court, with the exception of capital cases, may waive the right of trial by jury, has my support.

Such legislation would not be in conflict with any of the provisions of the Federal Constitution, provided the accused were otherwise assured due process of law. I recommend serious consideration of the system which has worked successfully in Maryland for over 140 years and which has materially aided in the efficient and swift despatch of criminal business. In the year 1924 over 90% of all the cases tried in the criminal court of Baltimore City were tried without a jury. The system was recently adopted by the State of Connecticut and is there giving satisfaction.

REDUCTION OF THE NUMBER OF PEREMPTORY CHALLENGES.

Upon the trial of an indictment for a crime punishable by death or imprisonment for life, each defendant is entitled to twenty-two peremptory challenges of the jurors called to try the case. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court must exclude him. The number twenty-two is purely arbitrary and works to the great disadvantage of the public welfare in many instances.

This may best be illustrated by the example of a specific case which is typical of many such cases tried in the Commonwealth.

Four men were on trial for robbery. Each man had twenty-two peremptory challenges, a total of eighty-eight. There were in attendance at the session of the Superior Court in which the defendants were being tried approximately forty men called for jury service. The entire panel was exhausted by peremptory challenges. Another panel in attendance in the court house was drawn upon, and it, too, was similarly exhausted. The court was finally forced to order the sheriffs to bring in prospective jurors from the highways and byways. If this order were literally carried out, the sheriffs would have had to bring in the hangers-on in the corridors, many of whom were defendants awaiting trials themselves.

In the trials of a recent major crime a conservative estimate of the cost to the Commonwealth of securing the jury is about $5,000, exclusive of the waste of time of the various panels of jurors held in readiness while counsel for the defendants exhausted, so far as their challenges would allow, the best qualified men. Because of the needlessly large number of challenges it is always necessary in robbery and capital cases to draw from two to five times as many jurors as in ordinary cases.

There is no sound argument in favor of so large a number of peremptory challenges. Jurors may be challenged for cause and will be excused by the court if sufficient reason therefor is shown. Peremptory challenges are used

only when good cause cannot be shown for challenging them. The present number of such challenges available to defendants means considerable unnecessary expense to the counties and frequently enables defendants to prevent the most suitable men from serving on the jury.

I recommend serious consideration of the suggestion that the number of peremptory challenges in these cases be reduced.

Speedy Hearing of Important Criminal Cases in the Supreme Court.

In 1924 the Attorney General and the District Attorneys suggested that in certain cases the practice of presenting points of law for review, in criminal cases, was open to improvement, and that in such cases the entire record and testimony might properly be certified to the Supreme Court. It was recommended at that time that legislation be enacted making it possible for such certification in all cases involving homicide and in other serious and important cases where, in the exercise of a sound discretion, the presiding justice is of the opinion that there should be such a certification. The Legislature in 1925 enacted a statute which provided for such a certification in any proceedings or trial upon an indictment for murder or manslaughter. See St. 1925, c. 279.

On last Wednesday the Governor transmitted to you a special report of the Judicial Council, in which that body recommends that a justice of the Superior Court presiding at a proceeding or trial upon an indictment or upon a complaint for any other criminal offence should be given authority to make the act of 1925 apply to the proceeding or trial in question. This recommendation has my earnest support, and the reasons therefor are set forth in my annual reports filed in 1924 (see p. 10), in 1925 (see p. 7) and in 1926 (see p. 15).

Recommendations at the Instance of the District Attorneys.

Following the practice of the past few years, conference was held with the several District Attorneys on November

21, 1925, and several proposed recommendations were discussed at the meeting. At the conclusion of the conference it was unanimously voted to authorize me, on behalf of the District Attorneys, to make the following recommendations:

A. *Increase of Penalty for Failure of Witnesses to attend.*

It was voted to renew this recommendation, which was made last year.

G. L., c. 233, § 5, provides that witnesses duly summoned and required to appear and testify, who fail to attend, may be punished by a fine of not more than $20. Failure of an important witness to appear at the trial of a criminal case may often imperil the successful prosecution of such case. The penalty for failure to attend when summoned should be sufficiently adequate to deter witnesses from refusing to appear. It is therefore recommended that the penalty for this offence be increased to a fine of not more than $300, or imprisonment for not more than three months, or both.

B. *Reduction of Minimum Penalties in Certain Cases.*

It was voted to renew the recommendation on this subject which was made last year to the effect that legislation be enacted carrying out the suggestion of the special commission relative to the criminal law to the effect that a person convicted of any crime excepting treason or murder, punishable by imprisonment in State Prison, may be sentenced to imprisonment in a house of correction for not more than two and a half years. (See Report of Special Commission to Investigate the Criminal Law, House, 1923, No. 224, pp. 5, 6, Append. "C".)

CONCLUSION.

It has been the purpose of this survey to analyze the situation carefully without bias or prejudgment.

The survey has pointed out certain defects in criminal justice in Massachusetts. Such defects as contribute to the increase of crime and its infrequent punishment should be remedied without delay. Complaints against existing evils should be followed by constructive criticism. This report is an attempt to follow that rule by suggesting remedial

legislation and better methods of administration. New criminal laws will be enacted by the General Court, as they have been in the past, when, in its judgment, they are deemed sound and necessary, but in the final analysis the greatest opportunity for improvement is to be found in the faithful and efficient administration of the laws that exist rather than in new laws.

In concluding this report I desire to make the observation that today, as always, the courts of Massachusetts are striving ably and conscientiously to meet their several responsibilities. It is for us to express continued confidence in them. All citizens should guard zealously the priceless heritage that has been ours since the foundation of the Commonwealth, — complete confidence in our courts, and in their administration of justice.

Respectfully submitted,

JAY R. BENTON,
Attorney General.

HOUSE . . . . No. 1167

The Commonwealth of Massachusetts

THE COMMONWEALTH OF MASSACHUSETTS,
EXECUTIVE DEPARTMENT, BOSTON, February 24, 1926.

To the Honorable Senate and House of Representatives:

I am transmitting herewith a special report of the Judicial Council, just submitted, with recommendations which if enacted into law will expedite the decision of questions of law in criminal cases.

In this report the Judicial Council states that the time in securing the final decision in questions of law in criminal cases is far too long, in some instances from eleven to thirteen months, constituting a serious defect in the administration of criminal law in Massachusetts. This phase of the administration of law is covered by this report of the Judicial Council, recommendations are made to remedy this defect, and a draft of an act has been submitted by the Council and attached to the accompanying report which I recommend to your earnest consideration in the hope that it will receive favorable action.

ALVAN T. FULLER.

SPECIAL REPORT OF THE JUDICIAL COUNCIL AS TO EXPEDITING THE DECISION OF QUESTIONS OF LAW IN CRIMINAL CASES.

FEBRUARY 24, 1926.

To His Excellency ALVAN T. FULLER, *Governor of Massachusetts.*

YOUR EXCELLENCY: — The time now taken in getting a final decision on questions of law in criminal cases is far too long. This is a serious defect in the administration of the criminal law in Massachusetts and there ought to be no delay in bringing it to an end.

Of the 488 cases before the full bench of the Supreme Judicial Court in the year ending September 1, 1924, there were 31 on the criminal side of the court. In these 31 cases the average time between the verdict of guilty in the Superior Court and the rescript of the Supreme Judicial Court disposing of questions of law which had been raised in the 31 cases was 13 and 4/31 months.

But among these 31 cases there were 5 in which (for one reason or another) more than the usual time was taken between verdict and rescript; and there were 3 of them in which a speedy decision was imperative and less time than usual was taken. Excluding these 8 and confining the statement to the 23 ordinary cases the average time between verdict and rescript was a little less than 11 in place of a little more than 13 months.

An analysis shows that the 11[1] months were taken up in the following way:

[1] In making this and the following computations a month was taken as the unit. For example, if an event happened on January 1 and the next event happened on February 28 the elapsed time was one month, and the elapsed time was one month where the first event took place on January 31 and the next event on February 1 This method of computation has resulted in certain obvious discrepancies.

	Months.	Months.	Months.
Between conviction and rescript	–	–	nearly 11
Between conviction and allowance exceptions . . .	–	$6\frac{2}{3}$	–
Between allowance exceptions and argument nearly . .	3	$4\frac{1}{2}$	$11\frac{1}{6}$
Between argument and rescript	$1\frac{1}{2}$		

Nearly 11 months between verdict and rescript is much too long. Of that there can be no question.

While 31 cases appealed to the Supreme Judicial Court is not a large number when compared with the whole number of criminal cases yet that number is apt to include cases involving serious offences, and delays in such cases furnish material for much public misunderstanding of the administration of justice.

It is not necessary to restate the necessity of certainty and celerity in punishment if punishment is to serve as a deterrent to crime. Your Excellency referred to it in your annual message and it was spoken of by the Judicial Council in its first annual report.

The cause of the $6\frac{2}{3}$ months in getting the record completed for entry in the Supreme Judicial Court does not appear on the face of the matter. But when the condition is considered it is plain that it is due principally to a defect in the system now in use.

The defect in the system consists in the fact that criminal cases would not be heard earlier were the records completed more quickly. Under these circumstances it is inevitable that the record for the Supreme Judicial Court is not completed promptly. In the practice of the law things get done when they have to be done and not before. There are always in practice more things waiting to be done than the busy lawyer can attend to readily. What the lawyer who is not busy does may be disregarded.

Criminal cases which go to the Supreme Judicial Court on questions of law are divided by Massachusetts statute into two classes, namely, those arising in cases in the six counties for which the court for the Commonwealth sits, namely, Suffolk, Middlesex, Norfolk, Essex, Plymouth and

Barnstable; and those in the other eight counties, namely, Berkshire, Franklin, Hampshire, Hampden, Worcester, Bristol, Dukes County and Nantucket. There is one law sitting each year of the court for the Commonwealth. It begins on the first Wednesday of January and is "adjourned to places and times most conducive to the despatch of business and to the interests of the public." For hearing and determining any questions of law arising in the other eight counties the Supreme Judicial Court is required by statute to go on circuit in September and October of each year and hold sittings in each of these counties, with the limitation that in two instances the full court sits in one county for two or more of them. By a recent act (St. 1920, c. 386) the Supreme Judicial Court is now authorized to sit in these outside counties "at such times [in September and October] as the court shall by rule determine."

Acting under the authority given it the law sittings of the full court are now as follows: On the third Tuesday of September at Pittsfield, on the following day at Greenfield or Northampton (for Hampshire and Franklin) and on the following day or two days in Springfield; on the Monday after the third Tuesday of September at Worcester; on the third Monday of October the court for the Commonwealth sits for a week in Boston, and on the fourth Monday of October the full court sits on circuit at Bristol; beginning with the second Monday of November the court for the Commonwealth sits at Boston for two weeks in that month, two weeks in December, three weeks in January and four weeks in March.[1]

Where the full court sits in an outside county it sits for hearing questions of law arising "in the county in which the sitting is held," with a limitation set forth in G. L., c. 211, § 13, not here material.

The sitting of the court for the Commonwealth is held for hearing and determining "questions of law arising"

[1] The court sits in consultation on Monday before the second Tuesday of September, the first Monday of October, fourth Monday of November, the Monday before the first Wednesday of January, the Tuesday after the fourth Monday in February, in March "at close of law arguments," on the third Monday of May and on the third Monday of June. These consultations (with the exception of the consultation "at the close of the law arguments" in March) last a week.

in the six counties enumerated above, "and by consent of parties filed in the case such questions in other counties."[1]

Under the system now in use delay is secured by raising questions of law in criminal cases in the eight outside counties and to a lesser degree in those in the six counties for which the court for the Commonwealth sits.

For example, if a question of law (upon which there is a reasonable doubt)[2] arises in a criminal case tried in Berkshire, Hampshire, Franklin or Hampden after the full court has held a law sitting in one of these counties in September, the question of law is not in the ordinary course of events heard by the full bench until September of the following year; and the same is true of criminal cases tried in Worcester and Bristol after October. Going still further the same is true to a lesser degree in criminal cases tried in Suffolk, Middlesex, Essex, Norfolk, Plymouth and Barnstable; questions of law (upon which there is a reasonable doubt) arising in criminal cases tried in those counties after February 1 will hardly get on the list of the court for the Commonwealth for its adjourned March sitting, and if they do not get on that list they go over until the following October, and if not reached in the one week sitting held by the court for the Commonwealth in that month, they go over until November.

The matter of securing a more speedy decision by the appellate court of questions of law in criminal cases is a matter to which the Judicial Council has given much consideration. It is obvious that for expediting such decisions the choice lies between amending the present system so as to secure a more prompt decision of such

[1] In addition it is provided by G. L., c. 211, § 14, that "upon application of a party the full court may order any . . . questions of law or case or matter to be entered and determined by the full court sitting in any county or for the commonwealth." But in practice the court is rarely called upon to exercise the authority thus given, presumably because out of consideration of fairness to all litigants cases put upon the list of the court of the Commonwealth are not taken up until cases arising in the six counties for which the court of the Commonwealth sits are disposed of; and parties in cases in the six counties for which the court for the Commonwealth sits rarely ask to have their cases transferred to sittings of the court on circuit in one of the eight outside counties. Again, in addition, exceptions alleged at the trial of capital cases in any of the eight outside counties may be entered and determined either at the law sitting of the Supreme Judicial Court for the county in which the case arose or "upon order of the justice presiding at the trial at the sitting of the court for the commonwealth." G. L., c. 211, § 15.

[2] Unless the presiding justice certifies to reasonable doubt the execution of a sentence is not stayed by exceptions. G. L., c. 279, § 4.

cases by the Supreme Judicial Court or creating a separate court of appeal for hearing and determining such questions of law; for example, an appellate criminal division of three judges of the Superior Court.

The advantages of a small separate court of criminal appeal which would have a short docket are obvious.[1] Such a court could be quickly assembled when enough cases were ready for hearing; less formality would be necessary in making up the record for three judges only and for three judges of the trial court; the cases would be reached and heard without the delay incident to the hearing and decision of criminal cases which are less in number than 7 per cent of all the cases on the docket of the court; and a decision ought to be reached in them more promptly than is possible when they are 31 or 39 in number on a docket of 488 or 526 cases in all.

On the other hand, the creation of a Superior Court of criminal appeal with a provision that its decision is to be final under all circumstances or final subject to a limited right of appeal in some of the cases before it is as radical a departure from the traditions of the Massachusetts judiciary as can well be imagined. And to that it must be added that the Superior Court is today in such a condition that experiments in its organization and work ought not to be tried at the present time. It has a badly congested docket to deal with;[2] with the two judges added this year it has now thirty-two full-time judges, and it has to rely on the services of judges called up from the District Courts to help in preventing a further increase in the congestion in its docket. And lastly, the creation of a Superior Court of criminal appeal ought to be considered in connection with or as part of a possibly more extensive reorganization of the judicial system of the Commonwealth. A reorganization of the whole judicial system of the Com-

[1] There were 31 criminal cases out of 488 on the docket of the Supreme Judicial Court in the year ending September 1, 1924, and 39 out of 526 on its docket for the year ending September 1, 1925.

[2] In the year ending June 30, 1925, although the Superior Court succeeded in preventing further congestion in its criminal docket it went behind in its docket as a whole. At the end of that year there were 2,728 more cases on the whole docket than there were at the end of the year preceding.

monwealth is a matter which the Judicial Council is not prepared to deal with at the present time.

On the other hand, the Council hesitates to make any suggestions which add to the burdens of the Supreme Judicial Court. The Supreme Judicial Court as the court of final resort has been working for many years and is working today under great pressure, but to great advantage in hearing and determining questions of law. With three exceptions only it has finished its docket year in and year out for twenty-seven years, and the exceptions in which the docket was not finished have been overcome. Doubtless that record goes further back, but so much is within the memory of those now living. This has been accomplished by great effort and (as we have said) we hesitate to add or to seem to add to the burdens of the court. But to anticipate the effect of the recommendation which we are about to make, our suggestion does not put additional work upon the court. It consists only in securing more prompt disposition of less than 7 per cent of the work which the court now has.

Whatever difference of opinion may exist as to what ought to be done, there can be and so far as we know there is no difference of opinion as to the necessity of something being done and done without delay to bring to an end the defect in the administration of justice in Massachusetts, which comes from the fact that ordinarily it takes eleven months to get a final decision upon a question of law (arising in a criminal case) as to which there is a reasonable doubt.

Under these circumstances the Judicial Council recommends that a statute should be enacted providing that questions of law arising in criminal cases should be entered in the court for the Commonwealth or in the court for the county in which the case was tried, whichever has the earlier sitting after the exceptions are allowed, the appeal taken or the report signed. And they suggest that the court for the Commonwealth should hold an adjourned sitting at the end of June for hearing and determining questions of law in criminal cases.

In 1925 (by St. 1925, c. 279) a speedy method was adopted of carrying questions of law to the full court in proceedings or trial upon an indictment for murder or manslaughter. The Council recommends that a justice of the Superior Court presiding at a proceeding or trial upon an indictment or upon a complaint for any other offence should be given authority to make that act applicable to the proceeding or trial in question. There are great delays in complying with the present practice as to drawing up bills of exceptions. In that connection the Council suggests that it is worth while to provide that in drawing a bill of exceptions in criminal cases the defendant be allowed to use the stenographic report (where the evidence has been taken by a stenographer) without change, except when and so far as the defendant's counsel and the district attorney agree that a portion of the evidence set forth in the report is not material.

A draft of an act to carry these recommendations into effect is annexed.

When there is an original indictment for manslaughter only the case may or may not be a particularly serious one. In the opinion of the Council the procedure brought into being by *St. 1925, c. 279,* ought not to apply to cases of manslaughter unless the presiding justice so directs. A change to that effect has been made in the draft act hereto annexed.

WILLIAM CALEB LORING.
FRANKLIN G. FESSENDEN.
CHARLES T. DAVIS.
WILLIAM M. PREST.
FRANK A. MILLIKEN.
ADDISON L. GREEN.
ROBERT G. DODGE.
FREDERICK W. MANSFIELD.
FRANK W. GRINNELL.

AN ACT TO EXPEDITE THE DECISION OF QUESTIONS OF LAW IN CRIMINAL CASES.

SECTION 1. Section seven of chapter two hundred and eleven of the General Laws is amended by inserting at the beginning thereof the words: — Questions of law in criminal cases which are entered upon the docket of the full court shall be argued in their order unless the court for cause directs otherwise before any civil cases are argued and thereafter, — and by the insertion of the words: — in civil cases, — before the words "which are entered", — so that the whole section shall read as follows: — Questions of law in criminal cases which are entered upon the docket of the full court shall be argued in their order unless the court for cause shown directs otherwise before any civil cases are argued and thereafter questions of law in civil cases which are entered upon the docket of the full court shall, when reached, be argued in their order if either party is ready, unless the court for good cause shown postpones the argument. But no party shall be compelled to be ready for argument within ten days after the question has been duly reserved of record in the court in which the case is pending."

SECTION 2. Section twelve of chapter two hundred and eleven of the General Laws is amended by inserting after the words "at such sitting" the words: — questions of law in criminal cases arising in any county in the commonwealth and, — and by inserting the words: — in civil cases, — before the words "arising in the counties of Barnstable", — and again before the words "arising in other counties", — so that the whole section shall read as follows: — A law sitting of the court for the commonwealth shall be held annually at Boston on the first Wednesday of January and may be adjourned to places and times most conducive to the despatch of business and to the interests of the public. At such sitting questions of law arising in criminal cases in any county in the commonwealth and questions of law arising in civil cases in the counties of Barnstable, Essex, Middlesex, Norfolk, Plymouth and Suffolk, and, by consent of the parties filed in the case such questions in civil cases arising in other counties and such questions for which no other provision is made, shall be entered and determined.

SECTION 3. Section thirty-two of chapter two hundred and seventy-eight of the General Laws is amended by adding at the beginning thereof the following: — Appeals, exceptions

or reports shall be entered by the defendant within ten days after the appeal is taken, the exceptions are allowed or the report is signed, at the next law sitting of the supreme judicial court for the county in which the case is pending or at the sitting including an adjourned sitting of the court for the commonwealth, whichever comes first after the appeal is taken, the exceptions are allowed or the report is signed, — and by the insertion of the following words before the words "or neglects", to wit: — within said ten days, — and by striking out the words "the superior court may, upon application of the district attorney and after notice, order that the appeal, exceptions or report be dismissed and that the judgment, opinion, ruling or order appealed from, excepted to or reported be affirmed" and substituting therefor the words: — The appeal, exceptions or report shall be dismissed by the superior court as matter of course unless further time is granted by a justice of the supreme judicial court and the judgment, opinion, ruling or order appealed from excepted to or reported be affirmed, — so that the whole section shall read: — Appeals, exceptions or reports shall be entered by the defendant within ten days after the appeal is taken, the exception is allowed or the report is signed at the next law sitting of the full court of the supreme judicial court for the county in which the case is pending or at the sitting including an adjourned sitting of the court for the commonwealth, whichever comes first after the appeal is taken, the exceptions are allowed or the report is signed. If the defendant neglects to enter his appeal, exceptions or report in the supreme judicial court within said ten days, or neglects to take the necessary measures for hearing of the cause in the supreme judicial court, the appeal, exceptions or report shall be dismissed by the superior court as matter of course unless further time is granted by a justice of the supreme judicial court and the judgment, opinion, ruling or order appealed from, excepted to or reported be affirmed.

SECTION 4. Section thirty-three A of chapter two hundred and seventy-eight of the General Laws is amended by inserting at the beginning thereof these words: — This section and sections thirty-three B to thirty-three G, inclusive, shall apply to any proceedings or trial upon an indictment for murder or upon an indictment or complaint for any other offense brought within this act by an order of a justice of the superior court under the following authority: a justice of the superior court presiding at any proceedings or trial upon

an indictment or complaint for any offense may enter an order directing that the proceeding or trial in question shall be governed by sections thirty-three A to thirty-three G. And sections thirty-three A and thirty-three B are amended by striking out the word "manslaughter" in the fifth line of section thirty-three A and in the second line of section thirty-three B and substituting therefor the words: — upon an indictment or complaint for any other offense brought within sections thirty-three A to thirty-three G, inclusive, by an order of a justice of the superior court. Section thirty-one, as amended by section two of chapter two hundred and seventy-nine of the acts for the year nineteen hundred and twenty-five, and section fifteen of chapter two hundred and eleven of the General Laws, as amended by section five of said chapter two hundred and seventy-nine, are amended by striking out the word "manslaughter" wherever it occurs in said sections and substituting for it the words: — a case brought within sections thirty-three A to thirty-three G, inclusive, by an order of a justice of the superior court. And said section thirty-one is further amended (1) by striking out the words "five days except by consent of the district attorney is allowed by the court", and by inserting in place thereof: — ten days is allowed by the presiding justice, except that for cause shown and specified in the order the presiding justice may within said ten days grant an extension of time specified in the order, in no event exceeding twenty days more, and except further upon application made to him in writing setting forth an emergency which has arisen, the chief justice may grant a further extension of time provided the application aforesaid is made within the maximum period of time hereinbefore set forth, — and (2) by the insertion of the following words before the words "the clerk immediately", namely: — in reducing exceptions to writing the defendant shall be at liberty to state the evidence in the case as it is set forth in the stenographic report (where the evidence has been taken by a stenographer) without change except when and so far as the district attorney and the defendant's attorney agree in writing that a specified portion is not material. Errors in the stenographic report of the evidence seasonably called to his attention shall be corrected by the presiding justice, — so that said section thirty-one shall read as follows: — *Section 31.* Exceptions may be alleged by a defendant in a criminal case who is aggrieved

by an opinion, ruling, direction or judgment of the superior court rendered upon any question of law arising at the trial of such case or upon a motion for a new trial but not upon a plea in abatement; provided, that exceptions alleged in any proceedings or trial upon an indictment for murder or upon an indictment or complaint for any other offense brought within sections thirty-three A to thirty-three G, inclusive, by an order of a justice of the superior court shall be governed by sections thirty-three A to thirty-three G, inclusive, and no bill of exceptions shall be entered or considered in the supreme judicial court in any such proceedings or trial. The exceptions shall be reduced to writing and filed with the clerk and notice thereof given to the commonwealth within three days after the verdict or after the opinion, ruling, direction or judgment excepted to is given, unless a further time, not exceeding ten days, is allowed by the presiding justice, except that, for cause shown and specified in the order, the presiding justice may within said ten days grant an extension of time specified in the order, in no event exceeding twenty days more, and except, further, upon application made to him in writing setting forth an emergency which has arisen the chief justice may grant a further extension of time, provided the application aforesaid is made within the maximum period of time hereinbefore set forth. In reducing exceptions to writing the defendant shall be at liberty to state the evidence in the case as it is set forth in the stenographic report (where the evidence has been taken by a stenographer) without change except when and so far as the district attorney and the defendant's attorney agree in writing that a specified portion is not material. Errors in the stenographic report of the evidence seasonably called to his attention shall be corrected by the presiding justice. The clerk immediately upon the filing of the exceptions shall present them to the court, and if upon examination thereof by the presiding justice they are found conformable to the truth, they shall be allowed by him. In all cases the district attorney shall have an opportunity to be heard concerning the allowance of such exceptions. The provisions of sections one hundred and fifteen to one hundred and seventeen, inclusive, of chapter two hundred and thirty-one, so far as appropriate, shall apply to exceptions taken in criminal cases.

SECTION 5. This act shall take effect on September first, nineteen hundred and twenty-six.

Facing The Problem of Crime

A Report
of the Committee on Municipal and Metropolitan Affairs
The Boston Chamber of Commerce

March 1, 1926

The Committee on Municipal and Metropolitan Affairs

FITZ-HENRY SMITH, JR., *Chairman*
ALBERT M. CHANDLER
JOHN W. DECROW
JAMES J. FITZGERALD
FRANK M. GUNBY
WALTER HUMPHREYS
GIFFORD LECLEAR
EVERETT MORSS, JR.
WILLIAM PEASE O'BRIEN
GOLDTHWAITE SHERRILL
C. OLIVER WELLINGTON
JOHN WHITE, JR.

The Sub-Committee on the Crime Problem

ALBERT M. CHANDLER, *Chairman*
JOHN W. DECROW
EVERETT MORSS, JR.
WILLIAM PEASE O'BRIEN

Secretaries

ELLERTON J. BREHAUT
BERNARD WIESMAN

Why should the Boston Chamber of Commerce study the problem of crime and interest itself in proposed remedies?

The activity of criminals is a menace to life and property. Crime directly affects the business man even more than the ordinary citizen. It causes a huge economic loss throughout the country every year. It challenges the civic self-respect of every community.

The indirect result of a prevalence of crime or a lax administration of justice is to lower the reputation of city and state. It affects our business as well as our civic standing in the country. A lawless reputation is a serious liability.

The reason for the present activity of the Chamber is a feeling that crime can be diminished in Massachusetts by proper treatment. The question is as to the best method. How can we assure a consistently efficient administration of justice?

This report is offered not as a panacea but as a constructive statement of proposals to correct our crime problem.

Facing The Problem of Crime

The problem of crime and the treatment of criminals is one which continuously confronts society. At times the problem becomes more acute and demands the serious consideration of our citizens.

Today in Massachusetts the Governor, the Judicial Council, the Attorney-General, the Registrar of Motor Vehicles and many others have called attention to an increase of crime within our borders and have made many suggestions as to how to deal with the situation. Massachusetts is not peculiar in this respect as we find that throughout the country there exists a similar increase of crime and many commissioners are engaged in a study of the crime problem.

The committee feels that the conditions in Massachusetts are much better than in some other parts of the country but it does feel that there has been a material increase in crime, especially in crimes of a serious character. In considering statistics, it must be borne in mind that at the present time the number of crimes committed are not tabulated. Records are kept only of the actual arrests and of cases brought into court. Although the number of arrests for serious crimes has not materially increased, nevertheless it is the consensus of opinion that the number of serious crimes committed has increased to a considerable degree.

No hasty or ill-advised action should be taken, but the situation demands most careful consideration and merits such action as may seem best fitted to lessen crime and to protect society from those persons inclined to break its laws.

The problem is four-fold; The Prevention of the Criminal; The Apprehension of the Criminal; The Prosecution of the Criminal; and The Punishment of the Criminal.

The prevention of the criminal involves the education of the child in the home, in the school and in the church. The apprehension of the criminal requires an efficient police organization. The prosecution of the criminal should be under a system of procedure, free from improper influences and free from technicalities and delays except such as will reasonably protect the rights of persons accused of crime. The punishment of the criminal involves such a wise disposition as will protect society as a whole, deter potential criminals and assist in the reformation of the criminal.

Prevention

Your committee strongly believes that the real solution of the crime problem lies in the education of the coming generation. While crime always has existed and always will exist, a strong and continuing public sentiment for a high standard of respect for law by all classes of the community, both old and young, will materially assist in reducing the criminal element in the community. Careful training in the home and school should bring our citizens to a better appreciation of their responsibilities. The increasing complexity of our civilization has caused many social problems, but it has also given us more exact and effective remedies for these conditions. The criminal is often the social and economic misfit. We should make better use of such aids as psychological examinations and vocational guidance.

These observations refer to a more distant objective. The treatment of the present problem is dealt with in the following discussion. A stronger administration together with certain amendments in our statutes must constitute our present agencies for the prevention of crime, in so far as it is preventible.

Apprehension

The apprehension of the criminal requires an efficient police force. The committee believes that the suggestion of the Attorney-General for a Metropolitan Police in place of the present large number of separate police units should be given careful consideration by the Commission on Crime hereinafter recommended or by some similar body. Under existing arrangements there is no proper coordination of effort among

the forty communities of the district. The proposed Metropolitan Force would benefit the whole district. This proposal is made for the convenience of the outside cities even more than for Boston. It is by no means an encroachment by the City of Boston. It would establish a District Police Force under the supervision of a Commission chosen by the Governor with the costs apportioned according to the service rendered.

The Attorney-General also suggests cooperation with police agencies throughout the country so that the records of criminals could be carefully compiled and rendered available through a central agency. This would be of direct assistance in the apprehension of the professional gunman or crackster who operates over wide districts. We believe that this is a desirable step. But it is essentially an administrative matter.

Prosecution

As to the prosecution of the criminal, we believe that in many respects the administration of criminal law is slow and cumbersome and also that it perhaps unduly favors the person accused of crime. Yet a hasty revision of our laws at this time might cause more harm than good. A large amount of new legislation would hardly cure our present problems. Because of the simplification of our system in 1899, furthermore, legal conditions in Massachusetts are far better than in many other states.

Before the present Legislature there are numerous proposals of considerable importance dealing with the prosecution and punishment of criminals. The committee has examined these suggestions and has come to certain conclusions which it presents for consideration:

a. **Indictment**: The Attorney General has recommended that legislation be enacted to empower the courts to allow the prosecuting officer at any time to amend indictments on matters of form which do not prejudice the rights of the defendant.

The committee believes that this proposal is worthy of consideration by the Judicial Council as a help in securing an effective administration of justice.

b. **Bail**: The bail bond situation is notoriously weak. Prisoners are sometimes bailed on insufficient bond; sometimes on perjured bond; sometimes on real assets immediately liquidated. Adjustments are made rather

often for a small portion of the full bond. The professional bail broker plays a big part in these abuses.

Representative Luitwieler at the instance of Registrar of Motor Vehicles Goodwin has brought in a bill (H 368) which aims to correct some of these abuses. Other proposals also have been made to correct the situation. This committee prefers to suggest that a thorough study be made of this item before a drastic revision is made. It believes that a careful reorganization should be made but only upon the mature advice of a Commission on Crime or the Judicial Council, which should be asked to investigate the bail bond situation.

c. **Speedy trial:** Competent authorities point out that a prompt and speedy trial is often a stronger deterrent to crime than a long deferred but severe punishment.

The committee believes that two present proposals may safely be adopted at this time. The first is the recommendation of the Judicial Council to provide that the Chief Justice of the Superior Court may continue to call up district court justices to sit with juries in the Superior Court and try cases of misdemeanor, except conspiracy and libel, as was provided by an Act of 1923 which expires in 1926. This law should be made permanent.

The second proposal which the committee recommends is the enactment of House 1167 for the speedier handling of exceptions. This is a recommendation of the Judcial Council, strongly supported by the Governor.

There is also a suggestion of Gov. Fuller to give precedence to cases of violence. This the committee is inclined to favor if it can be accomplished without unduly impeding the handling of other cases.

d. **Nolle Prosequi:** The committee feels that the question of the use of nolle prosequi by the District Attorney should be very carefully considered by the Judicial Council or Special Commission before it is acted upon. The present system is open to administrative abuse but methods other than curtailment or abolition may preserve this useful feature without permitting its abuse. By cooperation and occasional publicity, a citizens' organization might better achieve this purpose.

e. **Jury trial:** Three outstanding proposals for the improvement of our jury system have been made:

Waiver: The Governor and the Judicial Council suggest that a person accused before a municipal or district court be required to choose between a trial without jury in the lower court and a trial by jury in the

Superior Court. If he chooses a jury trial, the proceedings will be transferred immediately to the Superior Court. The Governor further suggests that an accused person be permitted to waive jury trial in the Superior Court if he so chooses. Such provisions exist in Maryland and Connecticut.

The committee believes that the Chamber should support this valuable proposal because it would expedite and simplify procedure without infringing the constitutional rights of the defendant.

Disqualification: Registrar Goodwin's bill H 445 provides that persons who have been at any time convicted of felony or other offence punishable by a sentence in jail or house of correction should be disqualified for jury service. A suggestion has also been made that the jury panel be drawn from males resident for one year in order to reach the non-voting class.

The bill to exclude convicts commends itself to the committee, which further suggests that the Special Commission give careful consideration to other plans for an improvement of the jury system.

Challenges: At the petition of Robert T. Bushnell, H 939 provides that there be a reduction from 22 to 6 in the number of peremptory challenges in cases for crimes punishable by death or life imprisonment.

This also has good features but would be inadvisable until further study and other adjustments are made.

f. **Evidence:**

Admission of record: Proposals are made that any previous convictions may be introduced in the trial of an accused person. If this were permitted, the result in actual practice might be that defendants would be tried rather on their records than on the specific charges against them. On the other hand, it has several features which are needed for an impartial and adequate trial. The committee advises that this proposal be carefully investigated by the Judicial Council.

Comment on Evidence: The Attorney General urges careful study of the advisability of legislation to permit the court to comment on evidence submitted in the trial and to express an opinion thereon. Federal judges are permitted to do this and the right existed in Massachusetts about fifty years ago.

The committee feels that an extension of the power of the judges with reference to analysis of and comments upon evidence may be desirable. It urges careful consideration by the Judicial Council.

Punishment

1. Disposition of Cases.

The Governor's recommendation that courts avail themselves still further of the criminal records tabulated by the Probation Commission is heartily endorsed. These records are now used extensively by many courts in the disposition of cases. The committee recommends an extension of this practice.

The question of the disposition of cases where conviction has been reached is complex. Administrative abuses are bound to occur under the present system but it is not easy to eliminate the faults. Registrar Goodwin aims to accomplish this by curtailing the discretion of the judiciary and district attorneys in H 242 on filing, H 247 on suspension of sentence, and H 304 on stay of execution.

On this last subject the Attorney General points out that no further legislation appears to be necessary to remedy the situation but he declares that too frequently the execution of the sentence is stayed.

The committee believes that improvement should be sought by an improved administration rather than by additional laws, and is opposed to the limitation on the judiciary suggested by these bills. To this end it suggests that an Association on Criminal Administration, as later described, be established to discourage administrative indiscretion or abuse.

On these matters affecting the prosecution of criminals the committee does not feel competent to recommend with authority what changes should be made. It has urged your support for several proposals on which data is obtainable and the probable effects are reasonably clear. On the other hand, it has ventured to advise against certain proposals either because they appear unsound or because their effect is too uncertain.

The committee earnestly recommends that all these proposals involving a change in our legal institutions or a limitation on the judicial administration be submitted by the Legislature to the Judicial Council for its opinion before they are acted upon by the Joint Judiciary Committee. This committee urges that no serious revision of the legal procedure or administration should be undertaken until the Judicial Council has examined each proposal and given its opinion.

2. Penalties.

The punishment of the criminal requires careful consideration. The Probation and Parole Systems are firmly established as part of our criminal administration and we believe that they are accomplishing a very useful purpose. We would disapprove any legislation which would seriously affect the administration of these systems.

It is true, however, that under our present systems the Courts, the District Attorney, the Probation and Parole officers have very broad discretionary powers as to matters affecting the punishment of the criminal, and there seems to be no question but that at times at least these powers have been exercised to the detriment of society as a whole. Yet whether such powers should be restricted seems questionable. While they may be abused in the hands of weak or inefficient officers, they are useful in the hands of wise and efficient officers. We feel that rather than limit these powers, a strong public sentiment should be created which will bring about more highly efficient administration of the punishment of the criminal.

In addition to suggested changes in Probation and Parole there are proposals to increase the term of imprisonment for specific offences. The committee believes that these bills would serve no useful purpose and that improvement should be sought in better administration rather than additional and more rigid laws.

Commission on Crime

The Attorney-General and others have recommended the creation by the Legislature of a comprehensive Commission on Crime, composed of representative citizens, to investigate fully the facts on all phases of the crime problem and report its recommendations thereon. Such a Commission would probably not be a continuing body and could perform a valuable service at the present time. We have already suggested that several proposed changes should be referred to the Commission. The committee believes that a Commission which would investigate the whole problem of crime, its causes and prevention, would serve a valuable function. We strongly support the creation of a Special Commission on Crime.

Association on Criminal Administration

We strongly recommend that the Commission on Crime consider the advisability of an Association on Criminal Administration, to be formed by private citizens for the improvement of criminal administration. Such an Association, with a competent, tactful and efficient administrative secretary, would be a potent factor on behalf of the public in dealing with the crime problem. It would keep closely in touch with the administration of criminal procedure and all matters connected with the crime problem; it would endeavor to secure honest and efficient administration; it would endorse such legislative action as would improve conditions; and it would keep the public fully informed as to all phases of the problems. It would be ready to prevent or thwart any administrative abuses involving the apprehension, prosecution or punishment of criminals by the formation of an intelligent public opinion. Primarily, however, it would work in close cooperation with the officers of the law. We believe that organizations and individuals interested in the decrease of crime would be glad to assist in the formation and financing of such an Association. Moreover, such an Association would be a continuing body and, we think, would be much more effective than an official body created by the Legislature.

The committee believes that this Association should be started in a rather small way. The expenses would not be great and probably could be defrayed by public subscription. It would begin in Suffolk and adjacent counties but would be ready to act in any other districts where the need becomes apparent. Its future would depend upon the requirements of the situation and the success with which it does its work.

The committee reiterates its firm belief that such a body would play an important and much needed role in our community. By the formation and maintenance of an intelligent public opinion on the administration of criminal justice, it would amply justify its existence. As an attempt to lessen the serious economic and physical losses from crime, this Association probably would be of direct benefit to business men. For these reasons, the committee believes that such organizations as the Chamber would avail themselves of this opportunity and take the lead in the movement.

We believe that there would be ample opportunity for the functioning of the Judicial Council, which is a combing body and which deals largely with court procedure; the Association on Criminal Administration, which would be a continuing body and which would deal largely with the administrative features of criminal procedure; and the Commission on Crime, which would investigate the present crime problem.

Summary

The Committee on Municipal and Metropolitan Affairs summarizes its findings:

Although there is no real "crime wave," there is a situation which warrants unusual study and attention.

The improvement should be sought in a consistently better administration rather than by additional and drastic legislation.

Certain bills before the Legislature are well fitted to correct legal deficiencies.

The advice of the Judicial Council should be obtained on all proposed changes in the criminal procedure.

A special Commission on Crime should be appointed by the Legislature to examine the present crime situation and suggest possible means of correction.

The establishment of an Association on Criminal Administration seems the best practical means for a permanent improvement of the crime situation.

Recommendations

The recommendations of the committee which have been approved by the Executive Committee and Board of Directors are as follows:

I. That the Chamber support a Commission on Crime which shall investigate the causes of the crime situation in Massachusetts and shall suggest changes to improve the administration of the criminal law.

II. That the Chamber recommend to the Commission on Crime the advantages of a citizens' Association on Criminal Administration to secure efficient administration of justice.

III. That the Chamber urge a more active cooperation among the police forces in the Metropolitan District and that

it suggest that the question of a Metropolitan Police Force be referred to the Commission on Crime.

IV. That the Chamber suggest that the Judicial Council be asked by the Legislature to give its opinion on the various proposals affecting criminal procedure.

V. That the Chamber support the following proposals, approved by the Judicial Council:

1. A permanent authorization of the use of district court justices in the Superior Court to sit with juries in cases of misdemeanor as under the present arrangement.
2. A speedier handling for bills of exception.
3. Permission for the waiver of jury trial by accused persons.

VI. That the Chamber oppose the other proposals on criminal procedure before the Legislature, at least until a very careful examination and report has been made on each by the Judicial Council.

APPENDIX A

Arrests for Drunkenness

Year	Boston	Entire State
1914	59,455	108,185
1915	58,385	106,146
1916	64,601	116,655
1917	72,897	129,455
1918	56,001	92,838
1919	42,856	79,212
1920	19,897	37,160
1921	30,462	59,585
1922	37,016	75,655
1923	38,887	84,280
1924	39,879	85,876
1925	38,357	82,809

Arrests for Offences Other than Drunkenness

(Mostly Misdemeanors)

Year	Boston	Entire State
1914	27,236	68,433
1915	28,895	72,864
1916	28,249	69,767
1917	31,469	79,661
1918	32,616	80,452
1919	31,470	81,180
1920	31,966	78,566
1921	35,811	94,535
1922	35,088	91,934
1923	34,010	93,650
1924	39,434	111,219
1925	40,635	112,973

Prisoners Remaining in All Prisons

On Sept. 30	States Prison	State Farm		Total in All
of	Male	M	F	Prisons in State
1914	690	1300	147	6877
1915	761	1220	188	6663
1916	706	1170	171	5657
1917	648	1078	170	5239
1918	556	442	87	3701
1919	537	299	67	2896
1920	483	208	42	2352
1921	525	388	52	3252
1922	615	459	65	3610
1923	644	555	63	3690
1924	660	750	65	4523
1925	757	850	77	5124

These figures were obtained from the Commissioner of Correction. The number of arrests were compiled by him from the yearly reports of local constables and chiefs of police.

APPENDIX B

CASES BEGUN IN THE LOWER COURTS FOR THE FOLLOWING YEARS ENDING SEPT. 30

Class I—Against the Person

	1910	1915	1920	1924	1925
Assault	10436	11078	7106	8376	8362
Murder	56	138	86	91	136
Manslaughter	80	131	179	288	266
Robbery	263	432	278	462	509
Other Offenses	559	665	728	817	915

Class II—Against Property

Larceny	7883	9971	7569	7936	8396
Unlawful Taking & Appro.	97	164	150	357	355
Other Offences	4199	6701	4714	5714	5347

Class III—Against Public Order, etc.

Drunkenness	96416	102919	36693	86626	79542
Liquor Law Violating	1989	1633	1545	10566	12482
Motor Vehicle Law Vio	3830	6950	21757	36509	35570
Narcotic Drug Law Vio.	69	475	300	235	314
Non-Support	2683	5329	3996	5598	5485
Weapon Carrying	514	702	662	817	770
Other Offenses	23254	30955	29571	37807	41838

Total of All Classes

	152328	178243	115334	202199	200287
Delinquent Children Cases Begun	4077	5393	6495	5976	6772
Neglected Children	1510	995	847	623	739

COMMUNITY

vs.

CRIMINAL

THE LAW

ITS LOOPHOLES AND THE FACTS IN THE CASE

By FRANK A. GOODWIN

Registrar of Motor Vehicles for Massachusetts

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COMMUNITY

VS.

CRIMINAL

THE greatest problem before the American people is the enforcement of law. It is not necessary to present an argument to prove that crime is an ever increasing menace, not only throughout the country but even here in Massachusetts. I think it may be well, however, to quote from a speech made by Judge Webster Thayer, of our superior court, in which he said: —

Crime has become an established business in this country today. This is particularly true in such cases as banditry, stealing automobiles and other offences. Criminal assaults upon women and girls are altogether too common. Our highways have become "slaughter houses" made such by reckless and intoxicated automobile drivers. Criminals are becoming bolder and bolder. The old-time bandit would seek the last avenue of escape before taking human life, but today the life of the victim is taken at first glance. The important question that the people of Massachusetts, for their own safety and protection, must decide is whether they have the courage to drive them beyond our borders. And it can be done by an aroused and fighting public opinion. But no jelly-fish or mollycoddle campaign can accomplish the desired end. Can any man deny that under our lenient probation system, particularly as to crimes of force and violence, there has been in the commission of those crimes in the past few years a tremendously alarming increase? This being the record, then leniency or probation for these crimes has not stopped the terrifying of the people in every community in the Commonwealth. There is altogether too much sickly and nauseating sentimentality shown to criminals of the graver class. There are too many flowers laid upon the brow of the criminal and altogether too few upon the bier of the victim. There are altogether too many persons anxious to extend a helping hand to the drunken automobile driver, who do not even look toward the countless widows and orphans made such by these drivers.

It ought not to be necessary in a well ordered government to assert that those in authority are unable or unwilling to protect the lives and property of its citizens. Sermons, speeches, magazine articles, editorials and the daily news-

paper chronicle of crime justifies such an assertion. The seriousness of this may be more forcibly impressed upon the minds of those who wish to maintain our government and its institutions, by reading the words of two of our conservative and distinguished citizens, the Reverend George A. Gordon, pastor of the New Old South Church, and the Honorable Hugo A. Dubuque, Justice of the Massachusetts Superior Court. Dr. Gordon, in his famous Washington Birthday sermon, said: —

There can be no surer sign of the degeneration of a state than the failure adequately to punish crime. Humanity to the criminal is the great cry, and the public does not seem to comprehend that humanity to the criminal may mean inhumanity and outrage to the honorable and just. When the public ceases to care whether crime is or is not adequately punished, whether law abiding men and women are or are not adequately protected, the social organization is approaching dissolution. Such a callous state of mind on the part of the public, such depth of immoral unconcern is sure to be followed, at length, by the worst of all social woes, anarchy. Brave and manly men will finally take the law into their own hands.

Judge Dubuque, while addressing a new panel, said: —

The history of the downfall of former civilizations is the history of the failure to punish crime.

To say that the American people cannot or will not rise to the occasion is unthinkable.

This whole question has many angles. The most important, perhaps, so far as the ultimate elimination of crime is concerned, is a study of primary causes, but in this crisis, we need action rather than study. As we look about us and see that most of the criminals, especially those guilty of violent crimes, are mere boys, we may well wonder if the home, the school, and the church have fallen down. They have the child when his mind is plastic and when impressions for good or evil are indelibly made. That this situation calls for immediate study by those best fitted for such work goes without saying.

What are we going to do with the criminals we have with us? That is the question. The only sane answer is punishment. For those who persist in violating laws, society

has provided a system of punishment. To apprehend and punish them, we have established police, courts and prisons. The failure of these agencies to function is best stated by the Chief Justice of the Supreme Court and ex-President of the United States, the Honorable William H. Taft, who said: —

The administration of criminal law in the United States is a disgrace to civilization. The trial of a criminal seems like a game of chance, with all the chances in favor of the criminal, and if he escapes, he seems to have the sympathy of a sporting public.

This is a strong statement from a man holding the highest judicial position in the country and must necessarily carry great weight.

In order to more fully impress this situation upon the mind of the reader, I would like to quote from Mark O. Prentiss, the organizer of the National Crime Commission, who said: —

I believe I am in a position to express what is in the mind of the average good citizen today. It is apparent and conceded that the administration of criminal justice has absolutely collapsed, and the reason we have the appalling condition now confronting us is because criminals go unpunished.

On March 1, 1920, I became Registrar of Motor Vehicles for Massachusetts, with power to issue and suspend or revoke licenses and registrations, and with the larger and more important duty of reducing accidents. I found that in the preceding year, 582 persons had been killed and more than 16,000 injured. I also found that the Massachusetts code of motor vehicle laws was the best in the country, with the possible exception of Connecticut, and IF OBEYED OR ENFORCED WOULD PRACTICALLY ELIMINATE ACCIDENTS.

It soon became apparent that the worst offenders against the code were the drunken drivers and a multitude of criminals dashing through our streets in automobiles. Every bootlegger, thief, robber and bandit was in possession of a car, many times a stolen one, for use in his business. These men inevitably got into accidents and

had their licenses revoked, but this did not prevent their driving. Upon investigating the records of these men, I found many of them to be persistent offenders, with records in the various courts. Some of them were before the courts ten, fifteen and even more than twenty times, but they always escaped a jail sentence. This led to a study of the criminal procedure, a study of the three agencies mentioned above, the police, the courts and the prisons.

In this pamphlet, I am going to state frankly what I have learned and present facts and figures which clearly indicate the necessity for immediate amendments to our criminal law. Not only that, but I am going to suggest what these amendments should be, and have presented to the Legislature bills providing for such amendments. I hope I shall have the support of the good citizens of Massachusetts in carrying out this program, having for its purpose, the closing up of the numerous loopholes through which criminals are now escaping punishment.

THE POLICE.

So far as Massachusetts is concerned, the police department of practically every city and town is performing its duty in an efficient and high-minded manner under discouraging conditions. With the exception of an occasional instance of "fixing," violators of the law are apprehended without fear or favor, only to escape punishment through the numerous loopholes and again go back to their old occupations. From the police standpoint, the disheartening futility of it all is well expressed by the Honorable Herbert A. Wilson, Police Commissioner of the city of Boston, who said: —

The only thing that I can do is to corral violators. If my men drive them into one side of the corral and someone is at the other end, letting down the bars, they can go out just as fast as they are driven in.

There is a pessimistic note in this statement but every police official in Massachusetts is in agreement with it.

According to records presented herein as Appendix E, NOT MORE THAN ONE PERSON OUT OF EVERY FORTY ARRESTED FOR CRIME IS JAILED. It is no wonder the police are discouraged and disgusted.

THE COURTS.

In discussing the courts and their relation to law enforcement, or rather lack of enforcement, it is well to divide the subject under seven heads.

FIRST. — PERSONNEL.

So far as honesty and integrity is concerned, Massachusetts judges are on the whole above reproach. I make this statement in order to correct any false impressions that may have been acquired as the result of the various criticisms I have made of courts and judges. Like judges everywhere, they are the victims of the system. The unexplainable leniency, however, on the part of judges, not only of the lower courts but of the superior bench, is responsible in a large measure for the situation in which we today find ourselves. This question will be discussed later with figures and specific cases, but at this time I should like to quote from a statement made by the Honorable Moorfield Storey, at a hearing before a legislative committee last Spring. He said: —

The courts have abused their discretionary powers and the time has arrived when the Legislature is justified in laying down hard and fast rules with specific penalties for certain offences which cannot be set aside by the whim of the judge.

SECOND. — LEGAL TECHNICALITIES.

One of the leading causes for the failure to convict criminals brought before the courts is the antiquated procedure concerning the admission of evidence. These rules that have come down to us from other days were invented by lawyers for the express purpose of preventing the truth from being discovered, if injurious to the defendant. They gave and still give lawyers an opportunity to

keep out of jail those criminals who can afford to pay. One of the strongest indictments against the present antiquated system was made by Judge Thomas H. Dowd of our own Municipal Court, in a recent address, in which he said: —

Under the common law theory of personal rights which has been carried to such extreme in America, the presumption of innocence has made of our courts a sanctuary for the criminal. Bound Prometheus-like to the rock of century-old precedent and obsolete rules of evidence, the judge in our modern jury trial is no more than a mere umpire enforcing the archaic rules of a thousand-year-old game, while the skilful lawyers attract the attention of the jury from the evidence of the case to the joust of their personal skill. The judge, even though he knows justice is being betrayed before his very eyes, is oftentimes powerless to interfere. All who are familiar with our jury trials know how farcical they may become at times.

Although there is no excuse for the continuance of these rules, and although many of the highest authorities in the land advocate immediate reform, NOWHERE IN THE COUNTRY HAS ANYTHING BEEN DONE. Speaking on this matter, the "Chicago News" in an editorial said: —

Procedural reform, for example, though advocated by all high-minded lawyers, has precious little chance in the Legislatures which are full of lawyers and politicians.

The "Boston Post" in an editorial on November 18, 1925, said: —

If a man found guilty of a felony and sentenced to State's prison has no money and no friends willing to put up any, not an hour is lost in clapping him behind the bars. No lawyer will lift a finger to save him. But if the prisoner has money and is willing to spend it, two or three years may elapse before he ever sees State's prison. Lawyers will move heaven and earth for him. They will invent one technicality after another, raise all sorts of nonsensical reasons for delay, put the State to as much expense and annoyance as possible to help some crook cheat the law. A bill can be introduced at the coming legislative session to change this unequality before the law. But such a measure will have to pass a committee composed entirely of lawyers and they will see to it that no such proposition gets very far. They always have succeeded in squelching any such bills.

This is indeed a pessimistic admission but close to the truth. It is not easy work to prepare amendments to these

rules, and it cannot be done except by some such body as the Judicial Council. In making this suggestion, however, I am not unmindful of a quotation from a speech by Chancellor Herbert S. Hadley of Missouri, who said: —

As a general rule, the reform of a system is not likely to be made by those who administer it and consider themselves responsible for its existence.

The recent report of the Judicial Council justifies the statement of Chancellor Hadley. This body has been in existence for one and one-half years. It is composed of five judges and four members of the bar. Its report contains 162 pages with ABSOLUTELY NO SUGGESTION THAT WILL RELIEVE THE COURTS FROM THE DEPLORABLE CONDITIONS MENTIONED ABOVE BY JUDGE DOWD.

On page 29 this Council does admit that "the pendulum has swung too far in the direction of leniency and that this tendency has reached a point at which it has led criminals, especially younger ones in some parts of the community, to hold in contempt the courts that are supposed to restrain their activities." After admitting that remarkable fact, which everybody else in the community has known for years, the Council proceeds to make only two recommendations, neither of which will remedy the unexplainable leniency of the courts or produce swift and sure punishment.

The first suggestion will permit a person accused of crime and brought before the Municipal Court of the city of Boston to elect whether or not he shall waive his constitutional right to a jury trial. If he refuses to waive that right, his case shall immediately go to the superior court. This part of the proposition, in my opinion, would be admirable, but let us see how the other part of the suggestion works out. If the defendant is willing to waive his right to trial, let us trace a concrete case, and I am sure any lawyer or layman will agree that there will be a greater opportunity for delay and miscarriage of justice than under the existing system.

Under the present system "A" is arrested and charged with stealing an automobile. He is brought before the

court and if found guilty has a right to appeal, and usually does, to the superior court. He is then entitled to a jury trial and if convicted by the jury, there is no appeal from the finding of fact, but he may appeal to the supreme judicial court on a question of law.

Now in order to prevent this delay, this is the way the case will be handled if the suggestion of the Judicial Council is carried out. "A" will be brought before the Municipal Court and will waive his right to a jury trial. A single judge will then try him on the facts. If the judge finds him guilty he has two opportunities to appeal. First, he may appeal if "he is aggrieved by any ruling of the justice on a matter of law" to the appellate division of the Municipal Court, made up of three judges, and if they decide against him, he has a right to appeal to the supreme judicial court.

In order to further protect the defendant, if the judge gives him one year in jail, even though the law says that the judge must give him a jail sentence of not less than one year, he will have a right, if he is not satisfied with that sentence, to appeal to a reviewing division of said Municipal Court, to be established for the review of sentences imposed in criminal cases. Not only that, but fearing that the defendant might not know he has a right to protest against the sentence, the law suggested by the Judicial Council says that before an order of commitment is made, the defendant "shall be notified of his right to claim a review of the sentence by the reviewing division." This reviewing division shall be made up of three more judges of the same court.

It does not require much intelligence to imagine how busy the appellate division and the reviewing division of the Municipal Court will be. In other words, instead of obviating delay, this suggestion of the Judicial Council will increase opportunities for delay, and we know from experience that criminals and their lawyers will take advantage of every opportunity.

The second suggestion to remedy criminal procedure made by the Judicial Council would permit any defendant

indicted for crime, except one punishable by death, to waive his constitutional right to a jury trial. Apparently this suggestion is made in order to relieve congestion in the superior courts and not for the purpose of putting more crooks and thieves in jail where they belong.

To prove this, I point to page 22 of the Council's report. There may be found this quotation from a letter from the clerk of the Hartford Court where this system is in vogue: "The last two years the percentage of convictions by the jury has been, roughly, about 90 per cent, and that by the court about 70 per cent." Apparently in Connecticut, where this suggestion has been tried, 20 per cent less persons are found guilty by judges than juries. If any further evidence is necessary to prove the superiority of jury trials over trials by judges, I would like to quote from Judge Christopher T. Callahan of our superior court, who, according to a newspaper report, said: "*I can think of nothing worse than to have a case of my own tried by a judge.*"

If we want the laws changed so that criminals may be put where they cannot prey on law abiding citizens, we must not expect lawyers to help. The following quotation from Judge James H. Wilkerson of the Federal Court of Chicago, while speaking of lawyers is worth repeating: —

Too frequently they have forgotten their position as chosen ministers of the law and have devoted their energies and talents to evading and thwarting it. It is not a pleasant record; it is one of the darkest pages in the history of our profession.

THIRD. — DISCRETION OF THE COURTS IN THE DISPOSITION OF CASES.

It is under this head that we find most of our trouble today. The judges in our lower courts have unlimited discretionary power in the disposition of cases coming before them with one or two exceptions. Regardless of the record of a defendant, or the enormity of his offence, they may without question place his case on file without a finding; they may find him guilty and suspend his sentence; or they may place him on probation for such time and under such conditions as they deem proper.

It is but natural that when this absolute power is given to hundreds of men, abuses will grow up. I have found that in many of the courts, favored lawyers are able to get favorable disposition for their clients. I have known of many other cases where associate justices have appeared for defendants in their own courts and have received special consideration from their brother judges. Cases are innumerable where politicians get persistent and habitual criminals off without punishment. I have found that many of the judges are too old and many more are over sentimental and easily imposed upon by clever lawyers. Some of them are eccentric and their actions for the day depend upon how they feel physically.

For five years I have been making a survey of these courts and I am frank to say that the disclosures are astounding, and indicate without question the necessity for immediately limiting the discretionary power of the judges.

Among the bills which I am presenting to the Legislature is one which limits the power of a judge to place any case on file against a person who has been convicted or had a case placed on file previously for any offence for which a jail sentence was or might have been imposed. I am also suggesting an amendment limiting the power to suspend sentences and place on probation in the same manner. The power to file, suspend sentences, and place on probation was doubtless invented for the purpose of giving a FIRST OFFENDER A CHANCE, but when this power is used to let persistent and habitual criminals escape just punishment ten, twenty and even thirty times, it is about time to call a halt.

In Appendix A I am presenting the record of an habitual violator of the law. This man came to my office and wanted his license back, it having been taken away for a conviction for larceny of an automobile. I told him I could not give it to him until his case was settled, his conviction in the Boston Municipal Court having been appealed and still pending in the superior court. He informed me that his case was going to be "fixed." He said he had been promised probation by the District Attorney's office

because of political support. After he left the office, I had his record looked up and was astounded, as the reader will no doubt be when he sees it in Appendix A. I wrote a letter to the District Attorney containing his record, with the following statement: —

Notwithstanding the record this man bears, it appears to me that he has never served a day, and in view of his utter disregard of the law and his operations carried on for some time involving stolen cars in the vicinity of Chelsea, Everett and Malden where he is well known to the several police departments, I think it is pretty near time that he and his type were placed where they can neither defy the law nor carry on their depredations and flaunt them in the faces of officers or others.

I then sent a copy of this letter and record to the superior court judge who was sitting at the time.

The day his case came up he did not appear and in the meantime I was importuned to "lay off;" that it would be fixed in the District Attorney's office if I would promise to say no more, and the lawyer who called me further informed me that the District Attorney's office told him that I had written the letter to the judge.

Immediately upon his failure to appear in court, the inspector prosecuting the case went to the office of the clerk of court and got a default warrant. Upon reaching his office, he found a telephone call awaiting him to bring back the warrant at the request of the District Attorney, for the case had been continued one week. When the case again came up, the defendant pleaded guilty, and notwithstanding the fact that he had as character witnesses an ex-Mayor of a city and a high police official was given a year in jail, the very first sentence he served after a long series of crimes. He had been placed on probation seven times; had suspended sentences six times; placed on file four times; and nol prossed twice.

Appendix B is the record of a bootlegger whose license was taken away by me because he was driving through the crowded streets of the city of Lynn in a speed wagon at from 45 to 50 miles an hour, pursued by an officer. At the time he had $3,000 worth of alcohol in the car.

It will be noticed in looking at his record that he was convicted in the Boston Municipal Court on September 4, 1923, and given ten days in the House of Correction for operating after his license was revoked. He appealed from this and it was fixed in the superior court upon a payment of $50. He then came to my office and made various threats, upon which an inspector was sent to watch him and he was again caught driving his car. Although his record was presented to the judge of the Municipal Court, he was given the minimum penalty provided by law, a $50 fine and ten days in the House of Correction, from which he appealed.

Representatives from a political club where he was a member came to me and stated that it could be fixed in the superior court for a fine, if I would promise to keep still. The case was finally settled with a $100 fine and ten days in jail, which he served; the first time he ever served.

Since then he has been convicted for violating automobile laws in Chelsea, where he was fined $20; in Boston, where he was fined $5; in Marlborough, where he was fined $50, but had the sentence suspended. In Chelsea he was given three months in the House of Correction and fined $20 for operating without a license and so as to endanger the lives and safety of the public, from which he appealed, and although the District Attorney knew he was a bootlegger and knew his record, the three months' jail sentence was changed to a $125 fine. This is the type of man that is killing and maiming innocent citizens on the highways and running away to avoid being identified.

Appendix C gives the record of an automobile thief. This record brings out clearly the abuse of discretionary power. It also illustrates how some courts manipulate to avoid imposing specific penalties provided by the law. The law says that any person convicted of larceny of an automobile shall be sentenced to not less than one year nor more than five. In order to avoid this penalty, there has grown up the custom of charging a man with "unlawful appropriation" rather than larceny. This charge is made under a statute passed more than one hundred years ago,

which provides that any one who takes or uses a boat or vehicle, or rides or uses any draught animal without the consent of the owner, shall be fined not more than $300. Because an automobile is a vehicle, some courts hit upon this subterfuge to avoid the larceny statute.

The thief whose record is given in Appendix C, between the years 1915 and 1923 was in court eight times for stealing or attempting to steal an automobile. His case was placed on file three times; he had his sentence suspended once; was fined twice; and was placed on probation twice, although the law specifically provides for a jail sentence. In three of these cases the charge was unlawful appropriation, AND THE LAST TIME HE WAS PLACED ON PROBATION, HE WAS ALREADY ON PROBATION. Finally he was again caught with another stolen car and this record was made public in a speech made by me at the City Club at a gathering of judges, whereupon a few days later the defendant was sent to jail.

These few cases that I am submitting are not isolated ones for there are hundreds of them and I have the records to prove my statement.

This unexplainable leniency on the part of the courts is known to every thief and crook, and the chances of going to jail are so few that we need not expect to stop crime unless we take away from the courts this power that they have been abusing.

The lavish filing of indictments both before and after conviction and the placing of convicted persons on probation indicate the necessity for limiting the discretionary power, even so far as the superior court is concerned. In the year 1924, according to records filed at the State House, of the 299 cases of robbery disposed of in the superior courts, 77 were placed on file, 47 were placed on probation and 26 were nol prossed; and of the 69 murder cases disposed of, 14 were placed on file, 18 were nol prossed, and 10 are still pending for sentence.

Perhaps there are some good reasons for placing cases on file, but I have not been able to find out what they are. If the man is guilty, he should be punished, and if he is

innocent, he should be acquitted. The record of filing and probation in cases not so serious as those above mentioned is even worse.

FOURTH. — DISTRICT ATTORNEYS.

Probably the weakest spot in our whole judicial system is the District Attorney's office. He is elected by the people and in order to be re-elected, it is his almost invariable custom to favor politicians and prominent lawyers. He has absolute authority to nol pros any case without giving any reason with one or two exceptions. This power should be taken from him, with the possible exception that a nolle prosequi be permitted in any case if the District Attorney makes a sworn statement that he has not sufficient evidence to convict. Among the bills presented this year is one to that effect so far as felonies are concerned.

Another loophole that should be closed up is one which permits the District Attorney to delay presenting a person to the court for sentence who has been convicted. There are hundreds of cases where the machinery of the State, at great expense, has been used to convict a man and then for months and even years the record reads "still pending for sentence." After a man is convicted for an offence calling for a term of imprisonment, there is no reason why he should not serve that term, if he is mentally and physically able.

FIFTH. — BAIL.

One of the most disgraceful and indefensible loopholes through which the criminals escape is the bail system. We find the amount of bail set ridiculously low in many cases, as, for instance, one just called to my attention by Police Commissioner Herbert A. Wilson, wherein the defendant was indicted on thirty-three counts for the larceny of $38,000, and let out on $500 bail. Naturally he immediately disappeared.

An even worse miscarriage of justice is found in the disposition of defaulted cases. Under the present law,

when a prisoner out on bail runs away his obligation and that of his surety shall be forfeited, and process issued against them if the District Attorney directs. If the bail is forfeited the "court may render judgment upon such terms as it may order against the principal or surety, or both, for the whole of the penalty with interest or, in its discretion, upon application of the defendant, in the judgment for a part thereof."

A study of the records of defaulted cases indicates that this discretionary power is abused by the courts and prosecuting officers. In looking over the records of one professional bondsman, I find case after case where the defendant defaulted, execution was issued, and an order filed of "execution satisfied" upon the payment of nominal sums. This record may be found hereafter as Appendix D.

When we realize that the professional bondsman before assuming his responsibility sees to it that the defendant, if unknown to him, produces money, diamonds, stolen articles, or other collateral, so that the bondsman will not be the loser if the defendant defaults, the profitable nature of the business may be imagined upon looking at Appendix D.

Professional thieves and crooks, especially those who wander about the country as pickpockets, robbers and highwaymen, recognize in the bail system a convenient method of escaping jail by the payment of cash. Among the amendments submitted by me will be found some intended to remedy this intolerable situation.

SIXTH. — JURIES.

On the whole, juries are doing their work well in Massachusetts. To be sure they are too sympathetic with criminals, but it must be remembered that the jury expresses more nearly than anything else public opinion. We must not expect any better law enforcement than the people insist upon, and it must be admitted that public opinion during the past few years has reached a pretty low state. Juries will do their part in law enforcement only to the extent that the public wants enforcement, for in the final analysis, the jury is the public.

There is one thing, however, that we should take every precaution to provide against — we should see to it that criminals are kept off our juries. The necessity for this was well expressed by District Attorney Arthur K. Reading, who said: —

The wisest judge and the ablest prosecuting attorney are powerless with a dishonest jury. There is a body in the court room with more power than the judge and the district attorney combined. Suppose you select for the jury eleven of the finest men the country can produce, one gunman in that jury can thwart justice by bringing about a disagreement. The government rests more heavily on the shoulders of the average American citizen than most of us realize.

We now have a law which authorizes those in authority to keep criminals off juries and every panel should be closely scrutinized by the courts.

Another amendment to our laws which would materially improve the character of our juries would be to allow women to serve as jurors. I assume such an amendment will be filed and I sincerely hope it will pass.

SEVENTH. — PROBATION SYSTEM.

The probation system which in theory may be all right and which was doubtless founded on humane principles has degenerated into a breeder of criminals. The probation officers, although appointed by the courts, are in many of the larger cities under the domination of ward politicians whose principal business seems to be the keeping of criminal constituents out of jail, so that they may prey upon honest, law-abiding constituents. Whether these politicians get their pay in money or in votes is immaterial to the person robbed or maimed.

I had always thought that when a person convicted of crime, who was placed on probation, committed another crime during the period of probation, he would immediately be put in jail, but I was dumbfounded to learn that this was not so. The law only says that the probation officer "may" in such a case arrest and bring before the court. The records show hundreds of cases where crooks and thieves CONTINUE REPEATEDLY TO COMMIT CRIME WHEN ON

PROBATION FOR OTHER CRIMES. One of the amendments I am submitting would change the word "may" to "shall." This would compel a probation officer to present to the court any one who violates his probation.

THE PRISONS.

I suppose every intelligent citizen of Massachusetts would agree to the proposition that the more prevalent crime is in a community, the more people ought to be in jail. It is a fact, however, in Massachusetts that the more crime and the more arrests for crime, the less criminals we have in our prisons. In order to prove this, I am going to reprint in this pamphlet as Appendix E statistics published on March 12, 1925, coming from the Honorable Sanford Bates, Commissioner of Correction for Massachusetts.

According to these records, in 1914 there were 176,618 persons arrested for all offences, while in 1924 the number of arrests had increased to 197,095. Notwithstanding this increase in arrests, in 1914 there were 6,877 persons in jails or prisons, while in 1924 there were only 4,523. It should be remembered that these 197,095 cases did not include minor offences like automobile and traffic violations but were offences serious enough to permit arresting the offender. If the reader will look again at the tables, he will see that for all offences other than drunkenness including of course the very serious ones, there were 111,219 arrests in 1924 as compared with 68,433 in 1914. These figures should be compared with the number of persons in prisons in the two years in question.

It must be apparent to the reader that very few of those who commit crime ever reach prison. The people are being taxed to support police and courts for the purpose of punishing criminals and then, strange as it may seem, the people are further taxed to support an agency whose sole purpose seems to be to nullify the work of the police and the courts. This latter agency is ably supported, as Richard Washburn Child says in his "Saturday Evening Post" articles, by a "lot of professors, social workers,

amateur philosophers, ladies' sympathy circles and rescue leagues."

I think a quotation from Judge Thomas H. Dowd of our Municipal Court expresses the situation tritely. He said: —

When out of the maze of judicial precedent and in spite of all the legal mummery, the people perchance emerge triumphant over the criminal, a sentimental and for the most part irresponsible Board of Pardon or Parole steps in and nullifies the work of the court.

There is altogether too much sympathy and nonsense in connection with the punishment of criminals. I think one of the finest statements on this subject was made by the Reverend Dr. S. Parkes Cadman in one of his sermons, in which he is quoted as having said: —

" Sob sisters " and " sob brothers " are brides and bridegrooms of crime, for in lamenting the criminals they are the aids and abettors of crime. I would ask the sentimental sympathizers with willful criminals — especially murderers — to go weep in the cemeteries where the victims lie, instead of in jail. But all punishment is relative. No one likes capital punishment any more than he likes a surgical operation, but when, as in Chicago, six policemen die for every murderer hanged, the relativity needs some Einstein to adjust it. In Great Britain, where there is prompt and drastic punishment, crime is deterred, and they do not bury lawbreakers in silver coffins either.

At the present time in Massachusetts when a man is sentenced to State Prison for a term of from twelve to twenty years, the law makes it possible for the parole board to let that man out after he has served two-thirds of his minimum sentence, or, in other words, at the end of eight years. There seems to be no sense or logic to this provision and I am proposing an amendment that will prevent his being let out until he serves at least his minimum sentence. He will then, of course, be on probation until the expiration of his maximum.

Another thing that seems unreasonable is the paroling of prisoners who have long records of crime. Parole may be all right for a first offender but after a man has been paroled and then persists in committing crimes, he should not be given the benefit of the parole system, and among the amendments presented by me to the Legislature is one taking care of this situation.

MISCELLANEOUS PROVISIONS.

Admission of Evidence.

Under the present law, whenever a person is being tried for a crime no matter how many times he may have been in court and convicted before, that record is not admissible in the case in question unless the defendant takes the stand. To say that a man's former record should not be presented to a court or a jury because it might prejudice them against him is a display of lack of confidence in the intelligence of our judges and juries. It seems to be the consensus of opinion among those who have given thought to this subject that there is no reason why the record of any defendant should not be admissible for what it is worth. A bill to remedy this situation has been presented to the Legislature.

Theft of Fruit, Vegetables, etc.

One of the worst abuses growing out of the use of automobiles is the robbing of farmers. After the farmer has worked all summer to produce fruits, vegetables, etc., thieves and crooks from the cities invade the farms and carry away the product of the farmer's labor. One of the amendments submitted provides for a compulsory jail sentence of not less than thirty days for anyone who steals and carries away fruit or vegetables to the value of more than $5, and no complaint for this offence shall be placed on file and no person convicted shall be placed on probation or have his sentence suspended. In addition to that, the court will be required to send the license number of the person convicted and the registration number of the car used in connection with the theft to the Registrar of Motor Vehicles who shall immediately revoke the said license and registration.

Another amendment would require the court to notify the Registrar of the license number of any person convicted for stealing poultry and the registration number of any car used in connection with said theft. The Registrar in turn would be required to revoke said license and registration.

RÉSUMÉ OF PROPOSED AMENDMENTS.

On File.

At the present time any lower court may place on file any complaint in a criminal case with one or two specific exceptions. This amendment is intended to prevent placing on file where the defendant has previously been convicted or had a complaint placed on file for any offence for which a sentence of imprisonment was or might have been given.

Probation.

At the present time the superior court may place on probation any person charged with crime and all courts may place on probation any person convicted for an offence. This amendment is intended to prevent any person from being placed on probation who has been convicted previously for any offence for which a sentence of imprisonment was or might have been imposed.

Suspended Sentences.

At the present time any lower court may suspend the sentence of any person convicted before it. This amendment is intended to prevent the suspension of any sentence of any person who has been convicted or had a case placed on file previously for any offence for which a sentence of imprisonment was or might have been imposed.

Nolle Prosequi.

At the present time a District Attorney has a right to nol pros any indictment for any or no reason. This amendment is intended to prevent the entry of nolle prosequi of an indictment charging felony for any reason except upon a sworn statement by the District Attorney that there is not sufficient evidence to convict.

Automobile Theft.

At the present time a person guilty of theft of an automobile must be given a sentence of not less than one year

nor more than five years unless the court certifies in writing that it believes some other disposition is in the public interest. This amendment would prevent the District Attorney from nol prossing and prevent the court from placing any case on file. It also would prevent the suspending of a sentence or the placing on probation of any person who has previously been convicted for any offence for which a sentence of imprisonment was or might have been imposed. This amendment also would bring within this statute any person who takes a car and steals parts, or anyone whose license has been suspended or revoked and who takes another person's car without authority.

UNLAWFUL APPROPRIATION.

Unlawful appropriation is a charge taken from a statute passed some hundred years ago, having to do with the taking of horses or other draft animals or vehicles, and provide a penalty up to $300. The courts have been putting this charge against automobile thieves in order to avoid the theft law which requires a jail sentence. This amendment would take motor vehicles out of the law and leave it what it was originally intended for, horses and carriages.

PAROLE.

First. — The parole of any person would be prevented even for a minor offence who has been granted a parole previously within a period of six years.

Second. — No prisoner shall be eligible to a parole from any prison except the Massachusetts Reformatory, the Reformatory for Women and the State Farm, who has been sentenced previously to a term of imprisonment.

Third. — The provision now permitting the parole board to let prisoners committed to State Prison out on two-thirds of their minimum sentence is ridiculous. For instance, when a man is sentenced from twelve to twenty years, which figures look big in the papers when the judge gives them it means that the prisoner may get out in eight years. This amendment is intended to wipe out that provision

and make every prisoner stay in at least for his minimum sentence.

Fourth. — At the present time, a probation officer, with the consent of the county commissioners and the judge in lower courts, and the District Attorney, when the sentence is from the upper court, may parole prisoners from county institutions if the sentence is one less than six months or if there are only six months or less remaining from a larger sentence. One amendment presented herewith would prevent the paroling of any prisoner who had been sentenced previously to a term of four months or more.

STAY OF EXECUTION.

At the present time after a man has been convicted, if the District Attorney does not see fit to present the prisoner before the court for sentence, there need be no disposition. There are hundreds of cases of all kinds under the heading "pending for sentence." Some of them probably will pend forever. There are many other cases where a man is convicted and rather than have the particular judge who sat through the case sentence the man, he is not presented for sentence until some later period and is out on bail in the meantime. This amendment would make it necessary where no exceptions have been allowed and no appeal taken for sentence to be imposed within seven days from the date of conviction, except upon a sworn statement filed by the judge that, in his opinion, the person sentenced is not fit physically to be imprisoned.

BAIL.

First. — If a person is arrested for any offence while out on bail on another charge, his case shall not be continued and he shall not be admitted to bail in less than $3,000 if both offences may be punished by imprisonment for one year or more, nor less than $10,000 if either offence is a felony.

Second. — If a person defaults, the court shall forthwith issue process to bring him into court for trial. Under the

present law, the court "may" issue process and in many cases does not.

Third. — If a person is arrested and charged with a felony, he shall not be admitted to bail in less than $5,000.

Fourth. — If a person under bail to prosecute an appeal fails to appear, his default shall be immediately recorded, and his obligation and that of his sureties forfeited. At the present time, this is discretionary with the District Attorney. This amendment would take away his discretionary power.

Fifth. — When the bond is adjudged forfeited, at the present time, the court may render judgment on any terms it may order for the whole of the penalty or in its discretion for a part of the penalty. This amendment would leave no discretion with the court. If a person out on bail defaults, there is no reason in the world why the full amount of the bond should not be collected.

JURIES.

Although at the present time if a man is convicted of a scandalous crime, he may be taken off a jury by the court, this is too indefinite. I am presenting an amendment which will prevent any person from serving on a jury who has been convicted of a felony or any crime for which imprisonment of one year or more was or might have been imposed.

ADMISSION OF RECORDS.

At the present time, no matter how bad a defendant's record may be, it is not admissible unless he takes the stand. One of the amendments submitted will make admissible all records of former convictions.

CONCLUSION.

During the past few years, our press and magazines have been filled with speeches, sermons and special articles dealing with crime and its ever increasing menace. In addition to what has gone before, I would like to quote from a few more of our distinguished citizens on this subject.

Honorable Charles E. Hughes:—

The great duty of the hour is not to make law, but to enforce law; to establish the fundamentals of surety of life and property and to maintain by enforcement, respect for law in our great cities.

Judge Alfred J. Talley, of the Court of General Sessions of New York:—

The demand of the hour in America above all other countries is for jurors with conscience, judges with courage and prisons which are neither country clubs nor health resorts.

Honorable Albert E. Pillsbury, Ex-Attorney General for Massachusetts:—

The Rev. Dr. Gordon's deliverance in the Old South Church on Washington's birthday is a great example of public leadership and is too valuable to pass with the occasion. It is not a sermon; it is a stern judgment against our disgraceful tolerance of the carnival of crime which our officers of government have utterly failed to suppress or even to check. It ought to be brought home to every voting citizen of Massachusetts, and I will contribute liberally in proportion to my means, as others will, to have that done. Our motor vehicles registrar, Goodwin, is making a brave effort in his field, which Dr. Gordon also entered upon, to restore criminal justice to her seat in Massachusetts. Dr. Gordon is right in saying that the sentimentalists who palter with crime are the pests of civilized society.

Moorfield Storey, Ex-President of American Bar Association:—

Conditions are disgraceful today in the Commonwealth of Massachusetts. Criminals are encouraged to appeal on the chance that they will escape punishment in the higher court. Every sort of influence — political, financial, social — is used to defeat the administration of justice and permit a criminal to escape the consequences of his act. I am satisfied that sooner or later the people of Massachusetts are going to demand that this thing stop.

Congressman Theodore E. Burton:—

There seems to be a supreme regard for the welfare and rights of the criminal rather than for the punishment of crime; laxity of criminal procedure and maudlin sentiment for criminals.

William J. Burns, the famous detective:—

Stop petting the criminal. Abolish the parole system and suspended sentences. Make punishment of crime swift and sure.

The one thought running through all the quotations given in this pamphlet is "ENFORCE THE LAW." In the final number of his sensational series of articles in the "Saturday Evening Post," Richard Washburn Child gave his remedy: —

If any one doubts the end to which this survey of crime leads, that doubt can be cleared in a single sentence as follows: The only cure ready to hand for lawbreaking and the tumbling down of authority and the degeneration of a sense of personal responsibility is law enforcement.

Every decent, law-abiding citizen of Massachusetts must realize the seriousness of the situation and must know that swift and sure punishment is the only remedy. The bills I have presented will not eliminate all the loopholes through which criminals are now escaping but if they are passed by the Legislature I am certain there will be a tremendous improvement at once. I hope every person who is willing to help put this program through will send his name and address to me.* This pamphlet is not copyrighted and any one may reprint it in part or whole if he thinks it will help the cause. The forces of evil are mobilized and in order to overthrow them we must mobilize the decent law-loving citizens of Massachusetts. Will you help?

FRANK A. GOODWIN,
Registrar of Motor Vehicles, Massachusetts.

* Additional copies of this pamphlet may be purchased from the publishers, The Wright and Potter Printing Company, 32 Derne Street, Boston.

APPENDIX A.

A Typical Record of Filing, Probation and Suspended Sentences.

Date.	Offence.	Court.	Disposition.
May 11, 1915	Assault and battery	Suffolk Superior	Probation.
Oct. 26, 1916	Drunkenness	Chelsea	Probation 6 months; filed May 31, 1917.
May 28, 1917	Drunkenness	Chelsea	$5, suspended.
July 24, 1917	Breaking and entering and attempted larceny.	Chelsea	Probable cause.
Sept. 11, 1917	Breaking and entering and larceny.	Chelsea	Filed Feb. 23, 1918.
Sept. 11, 1917	Lewd and lascivious cohabitation.	Chelsea	Filed March 23, 1918.
Aug. 5, 1919	Receiving stolen goods	Chelsea	4 months; appealed.
Nov. 7, 1919	Speeding	Malden	Probation to Nov. 14; $10, paid.
Nov. 14, 1919	Wrong number plates	Malden	Probation to Nov. 21; $10, paid.
Nov. 14, 1919	No registration certificate	Malden	Probation to Nov. 21; $10, paid.
June 7, 1920	Selling stolen goods	Suffolk Superior	Nol prossed.
Jan. 18, 1921	Carrying revolver	Chelsea	$100, suspended.
May 13, 1921	Auto not registered	Malden	$10, suspended.
May 13, 1921	Wrong number plates	Malden	$10, suspended.
May 20, 1921	No lights on auto	Malden	$5, suspended.
May 25, 1921	Fornication and violation of true name law (2 counts).	Chelsea	2 months and $20; appealed.
Oct. 19, 1921	Fornication and violation of true name law.	Suffolk Superior	$25, paid; filed.
June 3, 1921	Rescuing prisoner	Chelsea	6 months; appealed.
June 24, 1921	Rescuing prisoner	Suffolk Superior	Nol prossed.
July 13, 1921	Drunkenness	Chelsea	$5, suspended; July 23, 1921, paid.
July 13, 1921	Disturbance on car	Chelsea	30 days in House of Correction; appealed.
Oct. 31, 1921	Disturbance on car	Suffolk Superior	$20, paid.
July 25, 1921	Violation auto law	Boston Municipal	$20, probation; paid Sept. 7, 1921.
Mar. 8, 1922	Larceny	Malden	April 4, 1922, dismissed for want of prosecution.
May 9, 1922	Larceny of auto, afterwards changed to receiving stolen goods.	Middlesex Superior.	$100 to be paid probation officer.
June 6, 1922	Violation of auto law	Chelsea	June 14, 1922, dismissed.
June 6, 1922	Violation of auto law	Chelsea	June 24, filed.
June 24, 1922	No number plates	Chelsea	$25, paid.
June 29, 1922	Larceny of auto	Boston Municipal	1 year in House of Correction; appealed.
Nov. 29, 1922	Operating after suspension	Boston Municipal	$50.
Dec. 4, 1922	Operating after suspension and auto violations.	Boston Municipal	$20 and 6 months in House of Correction; put on probation.
Feb. 13, 1923	Larceny of auto	Suffolk Superior	1 year in jail; committed.
Apr. 14, 1924	Larceny (2 counts)	Charlestown	Defaulted.
Oct. – 1924	Larceny Served time in Maine for bootlegging.	Suffolk Superior	Indicted.
May 18, 1925	Larceny	Suffolk Superior	Acquitted.
Aug. 21, 1925	Operating after suspension	Chelsea	Acquitted.

APPENDIX B.

A Typical Record of a Bootlegger.

Date.	Offence.	Court.	Disposition.
Feb. 18, 1916	Assault and battery	Juvenile Court	Probation 1 year.
Mar. 21, 1917	Cruelty to animals	East Boston	$10, paid.
Apr. 10, 1917	Disturbing assembly	Juvenile Court	Probation filed.
May 26, 1917	Larceny	Charlestown	Industrial School; appealed.
Oct. 26, 1917	Larceny	Suffolk Superior	Probation.
May 6, 1918	Trespassing; assault on police officer.	Chelsea	Not guilty.
May 7, 1918	Drunkenness	Charlestown	$5, paid.
Dec. 29, 1920	Assault and battery	Boston	Filed.
Apr. 18, 1921	Operating auto unlicensed.	Boston	$10.
June 27, 1921	Assault and battery	Boston	$5.
Aug. 22, 1921	Throwing missiles	Boston	$5.
Aug. 22, 1921	Profanity	Boston	Filed.
Feb. 7, 1922	E. & K. liquor	Boston	$50, 7 months; appealed; $75, paid.
Mar. 6, 1922	Assault and battery	Boston	$15.
Mar. 25, 1923	Violation of auto law	Boston	$5.
July 11, 1923	Assault and battery	Boston	$15.
Aug. 14, 1922	No lights on auto	Boston	Filed.
May 25, 1923	Violation of auto law	Boston	$5, probation.
July 18, 1923	Without authority	Boston	1 month; appealed.
Aug. 29, 1923	Without authority	Suffolk Superior	Nol prossed.
Sept. 4, 1923	Operating after revocation and no registration certificate.	Boston	10 days in House of Correction; appealed; $50, appealed.
Oct. 8, 1923	Operating after revocation and no registration certificate.	Suffolk Superior	$50, paid.
Sept. 4, 1923	Throwing glass in street.	Boston	$10, paid.
Jan. 7, 1924	Operating after revocation.	Boston	$50 and 10 days in House of Correction; appealed.
Mar. 13, 1924	Operating after revocation.	Suffolk Superior	$100 and 10 days in House of Correction.
June 27, 1924	Violation of auto law	Chelsea	$20.
Aug. 16, 1924	Speeding	Boston	$5.
Sept. 20, 1924	Speeding	Marlborough	$50, suspended.
Sept. 23, 1924	No license	Chelsea	$20; appealed.
Sept. 23, 1924	Endangering	Chelsea	3 months in House of Correction; appealed.
Nov. 21, 1924	No license and endangering.	Suffolk Superior	$125, paid.

APPENDIX C.

A Typical Record of an Automobile Thief.

Date.	Offence.	Court.	Disposition.
Nov. 18, 1915	Larceny . . .	Roxbury . .	Filed.
Nov. 25, 1919	Unlawful appropriation.	Suffolk Superior	Filed without plea.
Aug. 23, 1920	Larceny of auto . .	Roxbury . .	Continued to Aug. 26, 1920; continued to Sept. 2, 1920; sentenced to Industrial School; sentence suspended to Sept. 3, 1921.
Dec. 9, 1920	Drunk	Roxbury . .	Continued to Dec. 19, 1920; placed on file.
Mar. 16, 1921	Obstructing sidewalk.	Roxbury . .	Continued to Mar. 23, 1921; filed.
Feb. 2, 1922	No license or registration.	Roxbury . .	Continued to Feb. 23, 1922; filed.
Feb. 2, 1922	Attempted larceny .	Roxbury . .	Continued to Feb. 23, 1922; 3 months in House of Correction; suspended to Feb. 3, 1923; filed.
Apr. 28, 1922	Unlawful appropriation.	Dorchester . .	Continued to May 5, 1922; $10, paid.
Apr. 28, 1922	No registration certificate.	Dorchester . .	May 5, 1922; filed.
Aug. 14, 1922	Larceny of auto .	Roxbury . .	Sentenced to Massachusetts Reformatory; appealed. This case was disposed of in Superior Court under a charge of misappropriation and payment of $100 on recommendation of Assistant District Attorney Robinson.
Dec. 11, 1922	Drunk	Roxbury . .	Continued to Dec. 18, 1922; $5, paid.
May 22, 1923	Larceny and receiving stolen goods.	Superior Court .	Probation 1 year.
Sept. 15, 1923	Unlawful appropriation.	Dorchester . .	Continued to Sept. 21, 1923; continued to Oct. 4, 1923; 3 months in House of Correction; suspended to May 1, 1924; probation.
Mar. 3, 1924	Surrendered . .	Superior Court .	Massachusetts Reformatory.

APPENDIX D.

List of Defaulted Bail Cases of One Professional Bondsman and the Settlements made.

Date of Default.	Amount of Bond.	Settlement.
Mar. 24, 1924	$500	$10
Mar. 24, 1924	500	75
May 28, 1924	300	8 70
May 28, 1924	300	50
Jan. 28, 1924	300	7 50
Dec. 22, 1924	500	50
Dec. 22, 1924	500	8 70
Dec. 22, 1924	100	8 70
Dec. 22, 1924	500	8 70
Nov. 24, 1924	500	8 70
Nov. 24, 1924	250	50
Nov. 24, 1924	150	50
Nov. 24, 1924	200	8 70
Sept. 13, 1924	1,000	50
June 25, 1924	200	50
June 25, 1924	500	50
June 25, 1924	500	50
June 25, 1924	200	50
Jan. 21, 1924	2,500	450
June 25, 1924	100	10
Jan. 28, 1924	500	8 70
Jan. 28, 1924	500	7 50
Jan. 28, 1924	300	7 50
Feb. 26, 1924	500	100
Jan. 28, 1924	500	100
Jan. 28, 1924	100	25
Jan. 28, 1924	500	100
Sept. 23, 1924	100	25
July 29, 1924	500	50
Jan. 28, 1924	500	7 50
Nov. 24, 1924	1,000	50
Jan. 21, 1924	500	No settlement.
Apr. 30, 1924	100	25
Apr. 30, 1924	300	75
June 25, 1924	100	50

APPENDIX E.

The More Arrests and the More Crime, the Less in Jail.

Arrests for Drunkenness.

	Boston.		Other Cities.		Towns.		Total.
	Male.	Female.	Male.	Female.	Male.	Female.	
1914 . .	54,658	4,797	36,886	2,174	9,418	252	108,185
1915 . .	53,465	4,920	36,210	2,271	9,020	260	106,146
1916 . .	59,267	5,334	40,277	2,417	9,105	255	116,655
1917 . .	67,341	5,556	42,878	2,371	11,029	280	129,455
1918 . .	52,124	3,877	27,776	1,670	7,116	275	92,838
1919 . .	39,847	3,009	28,380	1,613	6,201	162	79,212
1920 . .	18,675	1,222	13,937	581	2,680	65	37,160
1921 . .	28,785	1,677	22,940	850	5,226	107	59,585
1922 . .	35,173	1,843	30,895	1,136	6,500	108	75,655
1923 . .	37,040	1,847	36,219	1,191	7,864	119	84,280
1924 . .	37,879	2,000	36,493	1,218	8,168	118	85,876

Arrests for Offences Other than Drunkenness.

1914 . .	24,572	2,664	25,758	1,096	13,182	561	68,433
1915 . .	26,128	2,767	27,992	1,978	13,432	567	72,864
1916 . .	24,910	3,339	27,081	2,021	11,764	592	69,707
1917 . .	27,816	3,653	32,956	2,250	12,370	606	79,661
1918 . .	28,585	4,031	33,001	2,519	11,610	706	80,452
1919 . .	28,281	3,189	34,686	2,453	11,939	632	81,180
1920 . .	29,490	2,476	31,492	1,973	12,309	726	78,466
1921 . .	30,947	2,910	38,018	2,473	17,425	708	92,481
1922 . .	32,168	2,920	37,571	2,659	15,974	642	91,934
1923 . .	30,872	3,138	39,107	2,757	17,097	679	93,650
1924 . .	36,180	3,254	47,300	3,067	20,618	800	111,219

Prisoners remaining in All Prisons.

Sept. 30 —	S. P.	M. R.	R. W.	P. C. H.	State Farm.		County Prisons.		Total.
	M.	M.	F.	M.	M.	F.	M.	F.	
1914 . .	690	716	310	115	1,300	147	3,291	308	6,877
1915 . .	761	733	305	136	1,220	188	2,974	346	6,663
1916 . .	706	528	265	104	1,170	171	2,438	275	5,657
1917 . .	648	553	268	236	1,078	170	2,100	246	5,239
1918 . .	556	401	353	224	442	87	1,360	268	3,701
1919 . .	537	428	261	134	299	67	1,058	112	2,896
1920 . .	483	359	174	92	208	42	942	52	2,352
1921 . .	525	502	180	102	388	52	1,421	82	3,252
1922 . .	615	577	213	130	459	65	1,454	97	3,610
1923 . .	644	437	197	109	555	63	1,580	105	3,690
1924 . .	660	582	199	103	750	65	2,034	130	4,523

[*Note.* — The meaning of the abbreviations used in the table are as follows: M., male; F., female; S. P., State Prison; M. R., Massachusetts Reformatory; R. W., Reformatory for Women; P. C. H., Prison Camp and Hospital.]

Massachusetts Prison Association

No. 70

AN ARGUMENT FOR

— A CRIME COMMISSION —

Delivered before The Joint Judiciary Committee
of the Massachusetts Legislature on March 3, 1926
in Support of "House Bill No. 507"

By HENRY A. HIGGINS
Secretary Massachusetts Prison Association

Printed by MASSACHUSETTS PRISON ASSOCIATION
Barristers Hall, Boston

INTRODUCTION

In this state at the present time we are facing an unprecedented condition with reference to crime and its treatment. There has been excited an interest in the subject never before witnessed among us.

We have seen a campaign of attack upon our machinery of justice carried on over a period of months. We have seen the Governor bend to the storm in his message to the Legislature. We have heard the Attorney General make his report to the Legislature on the subject of crime, and we have just read his report in regard to some 400 cases of alleged miscarriage of justice which had been referred to him for investigation. Finally, as a climax to the publicity campaign of attack, we have seen many bills introduced in the Legislature which are held by their proponents to be necessary to bring about a remedy of the conditions that have been condemned, and we find this committee devoting a week to the exclusive discussion of these measures.

Now this bill of mine is not one of the advertised panaceas, it is not a quick-acting stop-gap based on inexperienced or feverish self-confidence. It is, on the contrary, based on a practical experience in dealing with the criminal in an official capacity, and on considerable study of criminology and related subjects. As a consequence, it reflects more respect for the slow, deliberate and painstaking labors of men trained in scientific investigation and scholarly research than for shallow and superficial studies of those who think that a quick alarm is all that is necessary to bring quick relief. The suggestion for this bill I received from the following recommendation made by Dean Roscoe Pound of Harvard Law School in the Boston Herald of August 29, 1925:

"Our whole system of criminal justice, devised for rural, pioneer, agricultural America (and still working reasonably well in rural communities, where the conditions obtain for which it was devised) needs to be studied functionally with reference to the needs of urban, industrial America of today. I wish it were possible to have a survey of criminal justice in Massachusetts, doing better for a whole state what Prof. Frankfurter and I sought to do in the Cleveland survey. Then we should be able to put a better valuation on the projects that are submitted to the Legislature and advocated more because it is evident that something should be done than because it is clear what that something is."

ORIGIN AND GROWTH OF CRIME ALARM

The people in this country have been slow in waking up to a full realization of fact that crime in the United States has been growing so menacing that it finally became a national disgrace. And yet the so-called failure of the criminal law is an old story. Chief Justice Holmes was one of the first to criticise it, years ago, when he said he believed its results were not much better than a blind guess and that it was doubtful if it did not do more harm than good. Justice Taft was the next to condemn the failure of our criminal laws and Elihu Root later added his complaint. Since then we have had many expressions of criticism. The American Bar Association, however, set the ball rolling in a criticism in 1922 that has been echoed and re-echoed until it has at last resulted in the fact being daily dinned in our ears. In August 1920, after 40 years of neglect of the subject of criminal law, the American Bar Association organized a Criminal Law section. Two years later its Committee on Law Enforcement filed a startling report, from which has echoed most of the cries since heard from all sides. The report will be found in full in Vol. 39, S. 126 of the New York Law Journal.

Justice Taft's criticism has frequently been repeated in fragmentary form. Here is the chief point of what he said at the Civic Forum, New York, in 1908:

"The administration of criminal law in this country is a disgrace to our civilization. The prevalence of crime and fraud which here is greatly in excess of that in European countries is due largely to the failure of the law and its administration to bring the criminals to justice. Since 1885 there have been 131,915 murders and 2,286 executions. In 1885 the number of murders was 1,808; in 1904 it had grown to 8,482. The number of executions in 1885 was 108; in 1904 116. This startling increase in the number of murders as compared to the number of executions tells the story.

As murder is on the increase, so are all offences of the felony class; and there can be no doubt that this will continue to increase unless the criminal laws are enforced with more certainty, more uniformity and more severity than they now are."

Charles F. Carter, writing in the February number of Current History in 1922, in commenting on this asks, "But have the laws been enforced with more uniformity, certainty and severity? They have not. In 1915, two years before the United States entered the World War, the number of murders had increased to 9,230, while executions numbered only 119.

"In 1885 there was one execution to each 16.7 murders; that is, the odds in favor of the murderer were 16.7 to 1; pretty safe, but still serious enough to give pause to those bent on homicide; for even if they escaped the gallows there was the chance of a long term of imprisonment. In 1904 the odds that the murderer could escape the death penalty had increased to 73 to 1; by 1915 the odds had lengthened to 77.5 to 1; by 1918, to 90 to 1."

Former Dean Kirchwey of the Columbia University Law School, speaking before the American Prison Congress in Boston in 1923, could not have foreseen the ultimate outcome of these repeated attacks on the criminal law, for he said: "It is very strange that these legal and judicial experts content themselves with condemnation. They set up a chorus of condemnation and then leave the thing to right itself." He thought it was rather curious to see the legal experts shifting the responsibility that is peculiarly their own and putting it up to the public.

That they were successful in putting up to the public with a vengeance is seen in the manner in which apathetic public indifference to crime has been turned into frenzied apprehension and into demands for drastic changes in procedure against criminals. It is not merely well done, but probably overdone. And unless we are careful we shall defeat the intelligent purpose of the whole movement. An overalarmed and uniformed public is not likely to be as discriminating either in its criticism of evils or in its advocacy of corrective measures as are lawyers, jurists and criminologists. Probably this is what Dr. Kirchwey had

in mind when he saw the members of his profession calling on laymen to mend matters.

Magazine writers took up the cry of the American Bar Association and then newspaper editors, journalistic free lances and ready writers in general followed their example until the opinions of Justice Taft and the comparative murder statistics of United States and England could be recited from memory by school children. Rupert Hughes, the novelist, wrote an astonishing article, "Cross Country Crime," in the June 1924 number of the Ladies' Home Journal. As he travelled over the country his attention was called to the fact that wherever he went, crime was uppermost in the news. From city to city and state to state he moved through an atmosphere that was nowhere free from crime. The evening paper put him to sleep to the tune of crime and the morning paper woke him with the shudder of crime. No matter which way he turned, no matter what papers he bought, it was always crime, crime, crime.

In July 1924 there appeared in Current Opinion an article entitled, "The Shame of American Lawlessness." The writer of that article summed up his view in these words: "The truth seems to be that crime flourishes in America because of the breakdown of criminal justice and the breakdown of family responsibility."

Herbert Mayer, writing in the June 1924 McClure's magazine "On Murder and Robbery as a Business" called special attention to the comparative immunity of the New York gangsters and murderers from punishment. He said that murder could be bought in New York for $50.00 a head, and adds, "The records of fifteen out of twenty-one cases in which manslaughter pleas or convictions resulted from first degree murder indictments show that but five and a fraction years constituted the average net punishment imposed by the courts."

During the summer of 1924, the whole country had its attention occupied with the murder of Bobby Franks in Chicago and the trial of Leopold and Loeb. The cold-bloodedness of this crime, and the fact that the murderers were rich men's sons who were capable of brilliant defence and escape of the death penalty made the trial one of the greatest in the history of the country. Even more than the

general alarm sent out by magazine writers and newspapers the Franks case set the American people to thinking about crime. From that time on the subject received keener attention.

All the while, however, crime continued to increase. Discussing it did not produce any corrective results nor did the condemnation of the criminal law bear any fruit. Finally there was organized in New York, early in 1925, a movement to create a National Crime Commission. A group of the country's most prominent citizens, realizing the seriousness of the situation, saw that crime, which in its most dangerous aspects is organized and protected, must be fought by powerful and nation-wide counter organization. A fresh wave of alarm-propaganada was again found necessary and Richard Washburn Child, former Ambassador to Italy and one of the organizers of the crime commission, wrote a series of articles in the Saturday Evening Post. The repetition of the articles and the wide circulation of the publication, together with Mr. Child's facility in writing and his directness in attacking the chief evils were highly effective in creating a stir all over the country.

As an alarmist, Mr. Child has been the outstanding figure among all the writers who have taken up the subject. Much of what he has said had already been said before, and he repeated himself over and over again. Worse, still, he only skimmed the surface of the subject. He dealt with great confidence and particularity on the purely police point of view and he discarded with disdain all scientific aspects of criminology. He had a hurried job to perform and it was easier to play the police reporter than the reasearch student. But his reiteration of grievances against the criminal law and his repeated emphasis on the need of immediate action had all the effect that the New York Crime Commission could have wished. And he proved that "our crime is the great American shame."

Mark O. Prentiss, another member of the National Crime Commission, offered his contribution to the awakening in an article in the October Current History. "Rallying Against Crime," was his theme and he begins by saying that crime is the greatest outstanding menace in America today. He quotes from insurance authorities on the cost of crime. The

annual cost for the country at large is placed at about ten billion dollars and the annual loss of life through murder and homicide is placed at 12,000. Mr. Prentiss deplores the use of an antiquated penal code, criticises the lack of co-operation among law enforcement officials generally, and says that some of them work against one another.

Like Mr. Child, Mr. Prentiss wants more punishment. He scores the softness of officials in cases calling for severity and he cites the case of one judge who gave probation to a young burglar who had been arrested 32 times for burglary. In particular, Mr. Prentiss makes out a strong case against our methods of criminal procedure, and he cites a long list of cases in which appeals of the criminal to the higher courts were rewarded by a reversal of the decision of the lower courts. The technical basis for this revision, he proves, is in most cases ridiculous and has no bearing on the guilt or innocence of the criminal. In summing up a number of such cases he says: "They are examples of the absurdly technical holdings of the courts which have brought contempt upon the administration of justice."

The National Crime Commission, for which Mr. Child and Mr. Prentiss have been speaking, received the suggestion of its origin from the Chicago Crime Commission which has been operating several years. Criminality in America has for years been at its worst in Chicago and the business men of the City organized the Crime Commission to back up the officials who are pitted against the criminal. An excellent account of the Commission's work can be found in the November 1920 issue of the Journal of Criminal Law and Criminology.

"The Rising Tide of Crime" by Lawrence Veiller in December 1925 World's Work is the next expression of opinion. Veiller runs over the usual array of statistics and he ventures an opinion as to the causes of crime. He says: "The chief factor in the increase in crime is unquestionably the lack of law enforcement, and the ease with which an army of criminals in our great cities finds it possible to baffle the police and carry on a business the profits of which far outweigh the risks that are involved. That the failure to punish crime is largely responsible for the extent of crime

is shown by the results which are achieved whenever there is a strict enforcement of the criminal law."

In Mr. Veiller's opinion, the criminal is stimulated to activity by the high expectation of the escape of consequences. He says: "The picture that flashes through his mind in the remote event of capture, shows arrest, release on bond, conference in the office of his attorney, trips to court where policemen vainly plead for action while his attorney obtains a delay, conviction perhaps, but in that event a new bail bond and an appeal to the higher court, long delay, the disappearance or fixing of witnesses and eventual escape."

The latest writer to offer his views is former United States Senator Burton who presents an article in the January 1926 number of Current History under the title, "Curbing Crime in the United States." He repeats, as do all the other writers, the well worn tables of statistics, adding little that is new and interpreting figures in the usual manner, as indicating that our crime is the result of constantly increasing laxity of punishment. Our criminal jurisprudence is to blame, of course. Every writer strikes that note. But that is not all. "There is a maudlin sentiment which sometimes bestows utterly undeserved sympathy upon criminals of the deepest dye, and even would exalt them into heroes. Compassion is more aroused for the guilty one in his cell than for his victim in the cemetery." Mr. Burton also thinks that many juries and judges are too lenient.

To remedy all this he believes that the most important thing to do is, "to arouse public opinion which shall realize the deep disgrace that rests upon us because of the prevalence of crime." In the usual manner he wants "a more prompt and more certain punishment for crime." Again he is speaking in the popular fashion when he says, "In some states the majesty of the law would be promoted by giving a long vacation to the existing parole boards." On this point you have to take a great deal for granted because no board is particularized and no facts are cited to support the opinion. Mr. Burton also believes with Mr. Secretary Wilbur that too many murderers get away with insanity pleas, and that it would be wise to prohibit a plea of insanity in murder trials. Guilt should be determined first and sanity afterward.

In the words of Mr. Burton, "it is best to brush aside certain modern theories, such as that of Lombroso that the causes of crime must be based on entirely physical criteria; also the theory that would deny individual responsibility." He does not know that the theories of Lombroso instead of being modern, are so obsolete that criminologists only refer to them historically. Mr. Burton is distrustful of science, and with strong personal opinion he makes short work of the time-honored controversy between the positive and classical schools of penology when he says: "There is, no doubt, merit in the suggestion that we study environment psychiatry, psychology, biology, sociology, and so forth, but let us not be befogged. Aside from some derelicts or degenerates, who should be incarcerated or permanently detached from society, crimes are the actions of those who are free agents, and in solving this problem we must not deny the existence of free will."

And thus we sum up the origin and development of the national alarm over crime in the United States.

The Effects of the Alarm

The effects of this campaign to excite the public have been felt all over the country and the result has been that almost everywhere the public has been excited to the point of panic. Newspapers have taken up the cry of the magazine exhorters and the message has filtered through varying degrees of intelligence until it has reached the busy man of affairs and the man in the street. But all along the line the impression has gained in strength that we have crime in America for two particular reasons; first because the criminal law is faulty, and second, because we have been too lenient with criminals. In popular imagination, therefore, there should be little trouble in stopping crime. All that is necessary is to send the criminals to prison for long sentences and have no nonsense about it. And in this respect the popular imagination is no different from that of the popularizers of the crime-wave alarm. Did they not all agree that we have had sentimentality, and pardons and parole and coddling of criminals; that judges were too lenient and that prisons were too soft?

The same utterances came from all these writers with

almost the regularity and repetition of a chanted litany. And did not all of them fall into the blunder of repeating the same hastily formed opinions and prejudices as well as facts? Did not all of them more or less undertake to inform the public before they had properly informed themselves? That much of what they have said about crime conditions is only too true, must, of course, be admitted. They have been correct, too, in regard to the general manner in which abuses have been practiced. Yet, they have all made the same mistake of ignoring or underestimating the scientific side of the subject, and they took without fail, the short cut to correction—more punishment and less leniency. They advised the abolition of the indeterminate sentence and parole; they suggested long sentences and severe prison discipline. And the public, thus advised, now unquestioningly makes the same demands, and legislatures are being asked to shape new laws to this end.

The movement for more punishment of criminals is sweeping the country. The indifferent public in the past had felt that this punishment was being administered. It was news to them to learn that so many criminals have escaped punishment wholly or in part, and now they indignantly want to have it settled so that they won't have to be bothered again. And if these ready writers, these new adepts at criminology, say that parole and probation should be abolished and that we should have long sentences and more hard work in prison, why that ends it so far as the public is concerned. By all means accept the remedy of the men who were good enough to find out what was wrong and to tell everybody about it.

Objections

But maybe there are some sound objections to this hasty program of reform. Probably the penologists and sociologists and psychiatrists and jurists have objections to which the new critics have given little attention. Well if they have it requires courage to voice them, for if you offer any objection at all to the cut-and-dried plan you are laughed to scorn; you are a "molly coddler," a "sob sister" or a "maudlin sentimentalist."

There seems to be a popular brand of microcephalic wit employed against expert correctional workers which

gains rapid currency and endures endless repetition. It seems to be easier to laugh at intelligence than to respect it. In order to laugh any intelligent proposition out of countenance, one has only to resort to that low order of humor which has made comic strips one of the staples in American journalism. If one rises above that level one's point is lost and his argument becomes esoteric. He is called a professor, an intellectual, a high brow, or some other dreaded name which indicates that he has an intelligence quotient of 18 years or over and is, therefore, to be avoided and his opinions mocked.

Such slurs have in the past been employed by brutal prison guards and police with their third degree. They have resented any interference with their cruel practices. But to have ready writers popularizing the jibes of these brutes is another matter. It certainly does not contribute to a solution of the crime problem. And no one seriously bent on making an effective drive against crime will descend to the use of silly and meaningless epithets. Slurs and sarcasm are poor substitutes for knowledge and rational argument.

The scientific group, composed of the trained minds in criminal jurisprudence, criminology, penology, and psychiatry, which has been so freely ignored or flouted by the alarmists, must be heard and heeded before any sensible plan of progress can be arranged. Nor will this group permit, without vigorous protest, any attempt to restore antiquated penal practices.

In Massachusetts this protest has already been made with promptness and vigor. This state has felt the hysteria in common with the rest of the country, and people became alarmed even though the crime here does not compare with that of many other sections of the country. Suffolk County, for instance, which includes the City of Boston, is particularly free from crimes of murder and violence. But in the general alarm, imported from the country at large, the people were caught off guard and infected with a fear that is not warranted by facts. It was not astonishing, for instance, to have Governor Fuller recommend the suspension of parole when a man like former U. S. Senator Burton advocates it in a publication like Current History.

It is this hysteria with its irrational impulses, that

stirred up protest and that resulted in an immediate alignment of the scientific and alarmist camps. The penologists objected to being stormed into penal practices of past ages; Dean Pound of the Harvard Law School explained the futility and the possible danger of hasty legislation; Bishop Lawrence of the Episcopal Diocese of Boston warned against shallow thinking and long sentences; Father Corrigan, a learned Jesuit sociologist, held firmly to the necessity of sticking to scientific procedure, and Commissioner of Correction Bates defended his prisons against the charge of soft treatment.

The trouble with the alarm in Massachusetts is that, like the general alarm sounded throughout the country, it has been sounded by persons who are only familiar with the obvious, and who are but little acquainted with, if not wholly ignorant of, the fundamentals of the crime problem. Not one of the writers who have been stirring up the subject represents any of the scientific groups that have been studying crime in this country.

The American Prison Congress was inaugurated in 1870 and since then has been holding annual meetings of experts and trained men. The records of these meetings are voluminous. In 1910 the American Institute of Criminology and Criminal Law was organized. This institute holds annual meetings and it prints a scholarly journal. It has also translated into English the best European books on criminology. We have a National Probation Association which also provides for specialized discussion and which publishes valuable information from trained workers. From these sources the sociological department of every worthwhile college in the country informs itself. And the colleges themselves are now making their own scholarly contribution to the science of criminology. The admirable work on criminology by Prof. Sutherland of the University of Illinois is one example. The work entitled Criminology and Penology by Professor Gillin of the University of Wisconsin is another. In the psychological and psychopathological studies of the criminal offender, the United States has been taking the world lead. In this field, Healey, Glueck, White and Adler have won high distinction. Their works are known to everyone who even pretends to know anything about criminology.

In addition to all this, a remarkable survey of the administration of criminal justice in the City of Cleveland was made in 1922 under the direction of Professor Frankfurter and Dean Pound of the Harvard Law School, and the result of this remarkable piece of comprehensive and expert investigation was printed by the Cleveland Foundation. In discussing this volume, Justice Harlan Stone of the United States Supreme Court, says, "The introduction to the survey was prepared by Prof. Frankfurter and Dean Pound has added a summary. Together the introduction and the summary constitute not only a review and summarization of the work of the survey, but constitute an admirable hand book in which is set forth the fundamentals of the problem of improving criminal justice and the guiding principles which must necessarily control successful effort at reform."

Now the extraordinary thing to observe is that not one of those writers and exhorters who have been alarming us over crime waves has shown the slightest knowledge of any of the information that has been thus scientifically organized. Look over their writings and see if there is in any of them even an inkling of the facts and principles outlined in authoritative works on criminology. They are as much in the dark as if they were to try to understand the science of medicine without a knowledge of physiology, anatomy, biology and chemistry. And yet these alarmists urge us to become excited and they would rush us pell mell into remedial legislative acts of their making.

But the American Bar Association, you may say, has started the alarm and that is not to be thus excluded. Well, in dwelling on the American Bar Association's report, remember that it was its first attempt in 40 years, and its conclusions, in some respects certainly would be expected to reflect the previous long blank of inexperience. Many things happened while Rip Van Winkle was asleep.

Another Fault

Another fault with the alarm in Massachusetts, and with the concomitant program of reform, is that they are largely the result of one man's conception of both the danger and the remedy. I do not say this in any narrow sense of disparagement, but merely to contrast the undertaking with

the undertaker. The history of the best of our laws dealing with criminal offenders is that they have been written by men who had acquired their knowledge of the criminal either through scientific study, or through practical experience, or both. Probably never before has a knowledge acquired from newspapers and filing cases addressed itself to the venture of making new criminal laws. And the venture is as dangerous as it is novel.

Nothing could be more unwise or more likely to lead us astray than to permit any one man, no matter how worthy he may be, to carry on an individual policy of reform in criminal justice. To conduct such a personally conceived reform on the basis of individual accusations that have been widely challenged, and on the strength of an individual investigation that is narrow, untrained, probably biased, and certainly utterly inadequate, is, on the face of the proposition, to assume a sense of prodigious self-confidence. It is to trust to one's self a task which most of us regard as being large enough to engage the intelligence, the ability and the patient research of the most capable group of trained minds that can be picked.

Atlas holding the world on his back is all right enough as an ancient myth, but our modern skepticism has taught us to have no such confidence or innocent trust in the powers of any one man. It is clear, therefore, that the correction of such faults of our law enforcement as are to be honestly and expertly discovered, is not a solitary undertaking, but a group function that will call for the co-ordinated intelligence of experts in the diverse fields of the administration of criminal justice.

If we go back over the charges that have been made against various law-enforcement agencies and officials for many months past, we shall find a condemnation which in its cumulative effect becomes a root and branch attack on practically our whole machinery for the administration of criminal law. And yet the remedy that is offered to us from this critical source, is but a few pieces of patch-work legislation, in which, we are assured, we can have the fullest confidence. "This legislation strikes at the very heart of evils" we are told, with rare self-confidence. Yet if one could take seriously the nightmare of conditions as described

in the numerous accusations one would certainly have to be child-like in faith to suppose that so terrible a calamity could be capable of such prompt and simple correction. There is something in the whole campaign that is reminiscent of the old-time advertisements of patent medicines. They began by making you feel the most alarming symptoms and then they eased your fears by proving the efficacy of a particular nostrum. They exaggerated the dangers in order to make the nostrum a necessity.

That the problem we are facing is not to be solved by such a simple formula may be gathered from this comment by Dean Pound: "The citizen who seeks to understand must expect to study hard and think critically and to keep many things in mind at once while framing his judgments. He must expect those judgments to be tentative and relative to time, place and circumstances. Much as he might like to rest in some formula and to believe in the efficacy of some specific applied for all time, he will find such hope as futile as the quest for the philosopher's stone, or the fountain of youth, or the one cure for all bodily ills in which men formerly engaged in a like hope of achieving an easy simplicity."

The trouble with the program that is being offered to us is that it is lacking utterly in the hard study and the critical thinking that Dean Pound advises, and it fails in the very simplicity of its conception, to grasp the complex and scientific features of the crime problem. It is scarcely necessary to labor this point in order to prove that it would not only be unwise but that it would be sheer folly for the Legislature to accept any plan except one based on deep study, critical thinking and sanely tentative judgments.

We have before us, for our guidance in this respect, the example of the City of Cleveland where a situation not unlike our own was met with excellent judgment and wise action.

A survey of criminal justice in the City of Cleveland was authorized by the Cleveland Foundation Committee on January 4, 1921, and was directed by Dean Pound and Professor Frankfurter of the Harvard Law School. It began in February 1921. A staff of thirty-five workers carried out the plan, which work included an investigation by ex-

perts of police administration, prosecution, criminal courts, correctional and penal administration, psychiatrical treatment of criminals, legal education in Cleveland, and newspapers and criminal justice. The investigation which was the outgrowth of a criminal scandal that involved a judge of the criminal court was the most scientific and complete undertaking of the kind ever attempted in America. The work, including the preparation of the reports took several months, and the reports with an introduction by Professor Frankfurter and a critical summary by Dean Pound, were printed by the Cleveland Foundation.

It is generally agreed that except for the conspicuous scandal involving Judge McGannon of Cleveland, there was nothing wrong in the administration of criminal law in Cleveland that does not apply to most of our big cities. The disease is general. But in Cleveland, thanks to the Cleveland Foundation, the investigation was placed in charge of the ablest experts, with the result that we have had a scientific diagnosis instead of the customary bungling attempt to work out a remedy without a real understanding of the basic causes of the trouble. Justice Harlan F. Stone of the United States Supreme Court reviewing in the Harvard Law Review the report of the Cleveland investigation speaks in the highest praise of the undertaking and the report. He says: "There has seldom been a time in recent years when the matter of criminal justice has not been the subject of newspaper report and public discussion in some part of the country. Innumerable movements for reform have been inaugurated and have run their course. Some peculiarly atrocious crime, some notorious failure of criminal justice, some scandal in the administration of criminal law, apparently fortuitous, actually inevitable since these manifestations are only the external symptoms of an internal disorder, stirs the public conscience to demand action and reform. The action demanded has usually been for the wreaking of vengeance. Incompetent or corrupt officials must be removed or punished and new ones substituted for them, who in turn are left to cope with all the forces which rendered their predecessors incompetent or corrupt. The demand for reform has usually found expression in new legislation creating new crimes, or new machinery for the administration of criminal justice, or both. More police

are added to the force, new courts are created, new officials established, and then having treated for the symptoms without really discovering the disease, the public interest turns to other matters, and we drop back into the slough of despond. This has been the traditional procedure in our efforts to reform criminal justice, and the inevitable result has led the most stout-hearted reformers to begin to despair of progress toward a more enlightened and efficient system."

Punishment

Now the evils of the usual demands for reform which Justice Stone deprecates are facing us here in Massachusetts. We are confronted with the customary clamor of which he speaks and are in danger of rushing into the same old trap which he says has been the despair of every stout-hearted reformer. There are some persons who, utterly unmindful of the possible futility or inadequacy of their measures, would press them upon us while the fever for action is high. They are all set for the usual rash haste and the same old rush of legislation. In fact they denounce as dilatory and obstructive any measure that is framed for a wider horizon than that which fixes itself on their short-sighted limitations.

Are we, then, to be taken unawares by their energetic insistance? Are we going to disregard the excellent example already set by Cleveland, when to follow it seems the only wise and sensible thing to do? Mindful of the fact that Cleveland came to Massachusetts to find the two men who directed the crime survey in that city, are we going to plunge forward blindly into the time-honored blunder of legislative patchwork, bungling things for our own citizens, and refusing to accept the very light from our leaders that was so profitably borrowed by another state? To do that would be to make ourselves a laughing stock.

We simply cannot make so absurd a blunder. To do less than has been done in Cleveland, would be to sin against the light of intelligent experience. And to hope to do more through the agency of less enlightened, although more self-confident reform groups, would be to abandon practicality and reach for a rainbow.

Of course these rainbow chasers will screech that they are the practical fellows. They are the ones who are to

give us quick and certain relief. Well, how? With punishment! Haven't they said over and over again, "give us swift and severe punishment"? They recite the invocation with the pious faith and sincerity of those who pray, "give us our daily bread." Little do they realize that they are the victims of their instinct instead of the mouthpieces of their reason.

Yes, down in that deep subsconscious, among the oldest inheritances from the savage ancestry, is the instinct that calls for punishment. It easily breaks its way through the thin layers of reason that we have so recently acquired. And the less reason it has to break through the more thoroughly it captures the mind. The criminal himself is a case in point.

"Give us punishment and drive out the sentimentalist and we will have no more crime" they tell us. And they frantically urge us to act at once as though, like the boy on the burning deck, we must jump or perish. Well if there is any one thing with which the human race has been surfeited, it is punishment. We resent all references to an anthropoid ancestry, and yet the primordial simian was a sensitive gentleman compared with his collateral descendant in human history. If the anthropoid ever learns to blush it will be when he reads human history and then hears of the Darwinian theory.

We are marked off from the lower animals no more distinctly by that sublime thing called our reason than by that base and brutal instinct that prompts us to torture our own species.

The sentimentalist is not very old in history. Christ turning to the crucified thief on the cross and giving him the promise of salvation in return for his contrition is the first instance of sympathy for a felon in punishment. And the crucifixion of the thief in itself is an illustration of the fact that severe punishment did not prevail against the crime of stealing. We still have thieves and the only difference between our cry for punishment of them today and that of 2000 years ago is one of degree in savagery. Our faith and that of the old days, in the instrumentality of punishment as a corrective, is identical.

Those who would correct the criminal by harsh punish-

ment have been born out of their historic period. If they resent a boy of nine years old being placed on probation for stealing a pair of shoes they should have lived in England in 1814 when they hanged the boy. If they want real hard-boiled treatment of criminals, touched with an ironic Christian mercy, they should have lived in England when life or limb was the punishment and when the law read as follows:

"And we command that Christian men be not on any account for altogether too little condemned to death; but rather let the gentle punishments be decreed for the benefit of the people, and let not be destroyed for little God's handiwork and his own purchase which he dearly bought. The practice of the court is regulated by the following enactment: That his hands be cut off, or his feet or both, according as the deed may be. And if he hath wrought yet greater wrong, then let his eyes be put out, and his nose, and his ears, and his upper lip be cut off, or let him be scalped; whichever of these those shall counsel whose duty it is to counsel thereupon so that punishment be inflicted and also the soul preserved."

To move back farther in history, if our friends would like punishment of crime developed into artistic torture designed for public entertainment they should have lived in Rome under Nero who imported all the criminals of the Empire and fed them to the animals in the arena to produce those orgies that made a Roman holiday. Those were the days when the criminal was not coddled! And as the day grew into night they dipped the criminals in pitch, and touched them with flame to illumine the arena. "Giving them a shirt of fire," was the Roman parole.

Here is a suggestion from Nero to the modern "hard-boiled" penologists. The Harvard Stadium has the seating capacity, Franklin Park Zoo the animals, and the criminals are in the institutions.

It isn't in cynical or mocking exaggeration that I draw up this sanguinary vision of the past, but to remind us of the long conflict that has been waged in the human breast between spiritual aspirations and the passions of the beast.

True enough, as all the alarmists have said, the public has been apathetic in the recent past. But after all that

may have been a blessing. Most publics, being fundamentally human are only civilized when they are relaxed or restrained. Within a month there was a public in Lexington, Kentucky, that did not need to be aroused from apathy where a crime had been committed. It took a thousand soldiers with machine guns to see that civilized law did not degenerate into elemental mob law. The alarmists did not write in vain for the public in another southern state that seized a poor victim who had been acquitted by the court and rushed him to the nearest tree on which they hanged him. It is an easy step from bench law to "Lynch" law.

There is a basic animal psychology of the pack, cruel and blind, that links the human being with the wolf. It is the link of blood-lust. It is easier to stir this lust than to abate it, and only fools play with it or appeal to it as a means of justice. When men in a mob cry out for criminal justice, it is usually the voice of the jungle speaking through the thin mask of civilization.

It is not to the passions or the base instincts of the multitude that we should appeal, but to their conscience and their responsive sense of the ideal. Such an appeal was made in 1837 by Abraham Lincoln. I quote it to you on account of its power of suggestion to all who would like to see our laws respected. He said:

"Let every American, every lover of liberty, every well-wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others. As the patriots of seventy-six did to the support of the Declaration of Independence, so to the support of the Constitution and laws let every American pledge his life, his property, and his sacred honor. Let every man remember that to violate the law is to trample on the blood of his father, and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, in spelling books, in almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation; and

let the old and the young, the rich and poor, the grave and the gay of all sexes and tongues and colors and conditions sacrifice unceasingly upon its altars."

Conclusion

In conclusion, Mr. Chairman, let us admit that there are shortcomings to be corrected and that action is necessary, although not hasty tinkering or "plugging up the holes" as some of the advocates of their measures have themselves described them. The abuses that have been cited by the various critics, have reference to cases placed on file, suspended sentences, continuance of criminal cases in court, long lapse of time between conviction and final decision, flabby and insecure bonding in bail cases, questionable nol prossing, unworthy probation and parole releases, the reversal of lower court decisions by higher court, and the coddling of criminals in prison. Bulked together all these abuses are said to be responsible for what is called the breakdown of criminal law.

Taking these criticisms locally for what they are worth, and discounting all exaggeration, they have at least served the purpose of indicating the manner in which a thorough and intelligent investigation should proceed. Clearly the investigation should be conducted by a group of experts comprising a commission as described and called for in this bill.

The Attorney General thinks so and has already made that recommendation although not with reference to this particular bill. The Boston Bar Association has made a similar recommendation and so has the Boston Chamber of Commerce. Finally, what is perhaps the most important recommendation for such a commission, is that of Dean Pound taken from the Boston Post of January 24th which is as follows:

"What seems to me the most promising of the recommendations is the one with respect to a commission to make a survey of criminal justice in the Commonwealth, study the facts of crime and factors in the administration of criminal justice and lay an assured foundation of fact for future legislation.

"Indeed I suspect that a report or series of reports of such a commission, if its work is done properly, would enable many things to be done for the improvement of the criminal law without interposition of legislation. Other things being equal, legal reforms are apt to be more efficacious when they proceed from the body that is to administer them. In the Judicial Council, Massachusetts has the machinery for bringing about important reforms whenever the foundation is laid for them by careful, scientific preparation and exact ascertainment of the facts.

"A good feature of the recommendations as to the proposed proposition, is the suggestion that it should not consist wholly of lawyers. More things than the law are interested in any adequate programme of criminal justice. All the agencies of prevention, detection and investigation, and of penal treatment, must likewise come into account. Experts in these fields are quite as important as lawyers upon any commission of this sort.

"Massachusetts has a great opportunity to take the lead in the improvement of criminal justice in America. Any thorough-going survey of criminal justice for a whole State will be sure to be taken as the model in the rest of the country. But no survey elsewhere can be at all so useful in Massachusetts as one made on the spot, as a direct and immediate survey of the operation of our own administrative, judicial and correctional machinery."

Note: That the crime alarm worked up in Massachusetts as a result of a publicity campaign is out of all proportion to the actual amount of crime committed, was proved with statistical thoroughness and finality by Commissioner of Correction Sanford Bates and Probation Commissioner Herbert C. Parsons in their speeches before the Joint Judiciary Committee on March 3, 1926. Mr. Parsons proved, further, that where modern penal methods are most fully applied there is the least crime.

ADDRESS OF SANFORD BATES, COMMISSIONER OF CORRECTION.

BEFORE THE JOINT COMMITTEE ON JUDICIARY MARCH 3, 1926.

Mr. Chairman and gentlemen, my name is Sanford Bates and I am the Commissioner of Correction. I happen to be President of the American Prison Association, Vice-President of the American Institute of Criminal Law and Criminology, and I had the great good fortune to represent the United States in London last summer at the International Prison Congress on the invitation of President Coolidge,—not at the expense of the state, however.

I have prepared some figures here, and I would like to take this opportunity, while speaking in opposition to House No. 303, Mr. Chairman, to speak in general defence of not only the principle of parole which this bill attacks, but the principles of what we had all supposed Massachusetts had come to realize as protective penology.

The proponents of this legislation, Mr. Chairman, have no monopoly on a desire to protect the public. We believe that the lessons of history and that the contemporary evidence all around us, has definitely demonstrated that severe punishment does not in the long run protect the community, and we say that the lessons of twenty centuries are such that we have got to try something new and something better, and something a little more daring and a little more progressive than this same old story which we have heard here for the last two or three days, and which we have heard for the last twenty centuries, which in all that time has never stopped crime.

It seems to me that the first pertinent inquiry is, what is the present situation in Massachusetts with regard to crime? Far be it from me to say that there is a crime wave or that there is not. I do not know, and I submit that nobody knows whether more crimes have actually been committed in Massachusetts in the last decade than in the decade that preceded it, but I do know that the figures gathered under the mandate of the law by my office do not prove that there is more crime in Massachusetts this year than there was last.

I submitted to you, Mr. Chairman and gentlemen, several exhibits which will bear on that proposition. The law requires that the Department of Correction shall gather certain figures and tabulate them for the use of the Legislature and for others interested

in the matter. I call your attention first to Exhibit A, which gives the number of arrests for drunkenness, the number of arrests for offences other than drunkenness, and the statistics of prisoners remaining in prisons for the last twelve years and I call your attention to the fact that lumping together the arrests for drunkenness and the offences other than drunkenness there are 1840 less arrests for crime in 1925 than there were in 1924. Arrests may not mean anything. I am not in a position to suggest—

Chairman SHUEBRUK. Where do you get those figures, Mr. Bates?

Commissioner BATES. They are taken from the reports of the chief of police.

Chairman SHUEBRUK. I mean are they on Exhibit A?

Commissioner BATES. They are on Ehhibit A. You need not take down a thing, Mr. Chairman. I have submitted everything to you practically that I am going to say in the way of statistics.

Chairman SHUEBRUK. I would like to follow it as I go along.

Commissioner BATES. Exhibit A is this first sheet connected with my brief, and you will find those under the 1925 total, 82,000 arrests for drunkenness and 112,000 arrests for other crimes, and subtracting those from the same totals under 1924, you will find a decrease of over 1800 arrests in the year before.

Now, as I was about to say, I am not prepared to claim that the police are more or less active or more or less successful in apprehending crime in any one of those years than they were in any other, but I do say it is fair to suppose that that is a fairly constant factor in the community, and that therefore we are perfectly justified in comparing arrests from year to year to show the growth or decrease in crime.

It may be that the reason for this belief in a crime wave was due to the fact that in the years 1917 to 1922, the tide of crime went away out. Our prisons were almost depopulated. They went down, as you see, from a population of 6800 to 2352 men in prison and we shut up five jails and they have never been reopened, and today in Middlesex County one of the jails has been closed and sold, and 90 cells have been taken off of one of them, and is it any wonder that the remaining prisons are over-populated? Last year there were 5100 men remaining in prison at the end of the year. My friend here says that is one of the things that proves there is a crime wave, because there are not enough men in prison, so I move on to the question of arrests and say that in the considera-

tion of the number of arrests we are getting a little closer to the real fact of whether there is a crime wave.

Now, I called attention recently in a public statement to the fact that what looks like an increase in crimes other than drunkenness—and I direct your attention to the middle part of Exhibit A—namely, an increase from 68,000 to 112,000 is not an increase, because that increase was taken up almost entirely by automobile violations over which my friend has almost exclusive control, and Volstead violations, and other technical misdemeanors, or more or less technical misdemeanors, which, plus the addition in population, will show that there has been no increase in the number of arrests for crime in twelve years.

In order to still further prove that, Mr. Chairman, I want to refer you to Exhibit B in which we are able to classify most of the crimes on which complaints were made and begun in the lower courts of the Commonwealth. I definitely exclude cases begun in superior courts because those may be a duplication of these. Some of the cases in the Superior Court, as you well know, are begun on indictment and begun on appeal, but these are all original entries of criminal cases, and you will see by the total that the same average holds good, that there were 1912 less criminal cases entered in the criminal courts for 1925 than there were for 1924, and you will see by comparison with that table about the same increase in crimes, namely, from 152,000 in 1910, to 200,287 in 1925, and you naturally would say, unless you made a closer examination, that this substantiated the claim that there was a crime wave. But I call your attention particularly, Mr. Chairman and gentlemen, to the column, "Motor Vehicle Law Violations," about the middle of the table, and you will see that in 1910 there were 3830 cases begun for violating automobile laws, and that last year there were 35,570, or an increase of nearly 32,000 cases begun for the violating of automobile laws. And if you look at the next column you will see that, naturally enough, after enactment of the new law, liquor law violations have increased from 1989 to 12,482.

The increase in population of Massachusetts from 1915, the last state census to 1925, was 12.8 per cent, and when you have made that allowance you find, Mr. Chairman, a positive decrease in cases begun in court in the last fifteen years in Massachusetts.

Let us look over these first few columns, which are what we generally refer to when we talk about crime, crimes against the person, assault, murder, manslaughter, robbery. In 1915 there

were 12,444 cases begun, and last year there were 10,188, or a decrease of over 2200 cases over ten years ago. I think the Attorney General has hit this matter squarely on the head, and has properly diagnosed the situation when he said that an epidemic of spectacular automobile hold-ups and robberies by certain young men who had gotten out of control was responsible for the agitation, and you will see that under the heading, "Robbery" where there was an increase from 461 to 509. But look at the carrying of weapons, a decrease from 817 to 770, look at larceny, a decrease from 9900 in 1915 to 8300 in 1925 and you do not find much statistical proof of the fact that there is a crime wave from these figures.

I have furnished you further, Mr. Chairman, what seems to be a most hopeful and most interesting table in Exhibit C, which shows the cases begun in the Boston Juvenile Court. As you know, the Boston Juvenile Court is one of the most advanced scientific and humane courts in the whole country. Only last night in the papers it was referred to by the chief of the Children's Bureau in Washington as the outstanding success of the treatment of juvenile delinquency in the whole country, and it teaches us a very timely and a very apt lesson that where you find kindly, humane, constructive efforts, you find success in decreasing crime, and where you find those twenty century old, vindictive, hard, repellent and repressive measures you find an increase in crime. That is not only the lesson of history, but it is the course of our contemporary experience, and here we have right in our own juvenile court a demonstration of that fact. Look at those figures. Juvenile crimes decreased from 1245 to 900 in fifteen years in spite of the increase in population, and neglected children brought into court decreased from 215 in 1910, to 41 in 1925.

Some people will say that they want a closer analysis of the question of arrests, and I have tried to provide that. We did not have time to do it for all the cities and towns, but we took the first seven cities, and we have classified the arrests in the same way that I classified those cases begun for you, and you find the same story there in Exhibit D, comparison of arrests for seven cities, including Boston, classified into these various classes. And so we find an aggregate decrease in crime, and a decrease as well in crimes against the person.

I furnished you in another table, Mr. Chairman, the growth of the number of registered automobiles in this state, and referring again to Exhibit B, and calling your attention to the fact that the

number of automobile violations which rate as crimes increased from 3830 to 35,000 in that same period, the number of registered automobiles in Massachusetts increased from 31,000 to 672,000. In other words, there are twenty times as many automobiles.

Chairman SHUEBRUK. Just a minute until I get those figures down?

Commissioner BATES. 31,000 and some hundreds, to 672,000. That appears on page 51 or the report of the Department of Public Works for 1924—31,360 in 1910, and 672,315 in 1925, exclusive of motor cycles.

What is the reason for this new situation? What is the reason for this new development? It is that we have introduced into our community an entirely new and revolutionary element, namely, the automobile, and, although we have twenty times as many automobiles, we have only ten times as many automobile violations. But that great influx of automobile violations has boosted the crime rate so that it would appear that there had been an increase, when as a matter of statistical record there has been a decrease.

Now, I want to refer to two more sets of figures. What gave rise to this agitation? The question of stolen cars. I took these next figures directly from Mr. Goodwin's own report, and I read you for seven years the stolen cars in Boston. I have furnished these to you in Exhibit E. In 1918, 866; 1919, 1063; 1920, 480; 1921, 490; 1922, 379; 1923, 516; 1924, 785. With three times as many automobiles we have had less cars stolen last year, according to this record than we had in 1919.

Representative HAYS. Just a moment. I don't see last year's. You have got 1924, which is the last that I have.

Commissioner BATES. And I have a letter here signed by Mr. McGonagle, Mr. Goodwin's own inspector of motor vehicles, to the effect that the comparative figure to that, the figure which is based upon the same monthly reports which come from the Police Commissioner, for 1925, is 878. As I explained here last night, the 5,490 figure which was given by Police Commissioner Wilson is every single car reported stolen either for an hour or half an hour, which, if he had pursued the same manner of gathering statistics this year as he did last, the figure which would have gone in there would have been 878 cars stolen.

Representative HAYS. And how many were recovered, do you know?

Commissioner BATES. Well, I haven't those figures. I just got this figure, monthly bulletins of cars stolen submitted by the police to the Registrar, and I submitted, I think, to one of your members last night a copy of that letter.

Now, let us go into the report of the Registrar of Motor Vehicles, for just one more bit of information. On page 51 of his report for 1924, we find the ratio of deaths to registrations, which is an important element in determining how much legislation we need, how much of this radical revolutionary legislation is actually made necessary by the facts. In 1910, as appears on Exhibit F, the ratio of persons killed per registrations was .00222, and the same figure for 1924 was .00103, or less than one half as many as there were fifteen years ago, and the record for 1925 is even better. 1925 is .00097.

Chairman SHUEBRUK. Will you repeat that, please?

Commissioner BATES. That is in Exhibit F.

Chairman SHUEBRUK. It isn't down here.

Commissioner BATES. That is right. 1925 is not on. .00097. Now, turning to the ratio of injuries to registrations, you have that for every year except 1925, in which there has been a slight increase, .03322, but I refer you back to 1916 when the same figures were .06910, or nearly twice as many.

Representative HAYS. In order to have all the figures, have you got the complete registration in 1925 so you can carry that out?

Commissioner BATES. I haven't that, but I imagine it is about 25 per cent in addition to what it was last year.

Registrar GOODWIN. About 16 per cent.

Commissioner BATES. That would be about 760,000?

Registrar GOODWIN. Yes.

Commissioner BATES. About 760,000 total.

Now, the second point I want to make is that these figures which I read to you do not indicate that the courts of Massachusetts have contributed to the crime wave through leniency of treatment. In other words, if you will look first at Table A, you will see the average number of men in prison was 600 more in 1925 than it was in 1924, when as a matter of fact there was a total less number of arrests of 1300 in 1925 than there was in 1924. With less coming into the courts, the average daily prison population is raised by 600 people. That does not indicate that the courts have been overcome with leniency as a general proposition. And, Mr. Chairman and gentlemen, I prefer to reason from statistics and

from general conclusions rather than to go into one office or the other, or into one department or the other and pick up cases, and exercise that always superhuman judgment which comes after a case has been decided, and say that this case was wrong or that case looks bad,—and so they do look bad. I would rather judge a system by its success than by its failures. I would rather judge a system by a birdseye view of what that system as a whole has done, rather than pick out one or two or three or eighty-six isolated cases and say that those have damned the whole system.

And so I believe it is safe to make the assumption that the courts have been increasing in severity rather than in leniency.

I want to call just one more fact to your attention, Mr. Chairman, that whatever may be the country-wide situation, this legislation is asked for Massachusetts. Thoughtful students of criminology have many times remarked that the states most free from crimes are not the ones where the greatest severity of treatment is practised, but on the contrary are the ones that have gone the farthest in the adoption of scientific and progressive measures of reformative and preventive penology. That is the position Massachusetts occupies today. I have some figures taken from one of the most earnest psychiatrists practising in the country today, Dr. Healy, and he took a group of 420 juvenile delinquents, and he followed them through in Chicago and in Boston, and the result is an amazing tribute to the effectiveness of the new method in the protection of society, that the way to protect it is to get at the root of the evil and prevent crime. In Chicago of that 420, 109 afterwards went on probation and 311 of them went to juvenile institutions. In Boston 317 succeeded on probation and 83 had to go to juvenile institutions. In Chicago of the 420, 157 got into prisons for adults, and in Boston 19. Is it any wonder that Miss Edith Abbott points to Boston as a success?

Some of the records read here yesterday were the records of children eight and nine and ten years of age. If these bills become law on the second offense, some of those children would be in an institution or a prison instead of saved to a life of law-abiding citizenship, as they are being saved today by the Boston Juvenile Court and the Judge Baker Foundation and efforts, the success of which have been testified to by things of that kind. The eyes of the country and of the students of penology and sociology are on Massachusetts today to see whether Massachusetts is to turn its back on these scientific principles of probation and parole and the

indeterminate sentence and whether, without evidence, without any reason except public clamor, we are to pass laws which will definitely lower us in the estimation of the students of criminology all over the world.

Representative HAYS. Do you mind being interrupted?

Commissioner BATES. No, sir.

Representative HAYS. These statistics that you gave on juveniles, the 300 odd, were released on parole, and of those nineteen went wrong. Is that correct?

Commissioner BATES. These 420 were all cases of confirmed juvenile deliquents and each case sent to the juvenile court. I do not quote these as parole statistics at all. I quote them to show the fact that the better organization of reform and betterment work in Boston has coped with a situation that the crime codes and the severe treatments of other jurisdictions can never cope with.

Representative HAYS. As a matter of fact, you said nineteen of the other.

Commissioner BATES. Of the 420 in Chicago 157 eventually got into adult penal institutions, and of the 420 in Boston only 19 got into penal institutions for adults.

Representative HAYS. Does that mean that some of them got into other correctional institutions besides those 19?

Commissioner BATES. Well, the 311 of the 420 in Chicago went into juvenile institutions, and perhaps from there graduated into an institution for adults, or may have stayed there. In Boston 83 went that route through the juvenile institutions, 19 of that 83 eventually arriving in an institution for adults.

Many people jump at the conclusion, Mr. Chairman, that parole is synonymous with leniency. Now, the parole advocates of this state do not assume to decide how much time a man shall serve in the institution except within certain prescribed legal limits, but we make this one statement, that whatever may be the time that a man should serve in prison, the protection of the community demands that when he comes out he come out under a form of supervision, and we stand here today to make the statement that in the light of modern penology no man should ever be turned from prison directly into the community without the help and the safeguard and the protection of parole supervision.

Now, our parole law is not the parole law of Illinois or Missouri or any of the other states. It is a properly safeguarded parole law which says that a man may be sent to the prison on a minimum

and a maximum basis, and may not come out until two-thirds of the minimum has expired, and when he does come out he shall come out under supervision. But it says that if a man goes through his sentence and finishes his minimum time, he must come out, and the Parole Board has no authority but to let him out; and it is a beneficent law, Mr. Chairman, because it makes sure that no man shall ever come out of the prison except he comes out under supervision.

Just a word about the practice of parole supervision as we attempt to practise it. We make our mistakes. There is not a man in the world that does not make his mistakes. There is not a man in the world carrying on public business today who cannot be subject to the same kind of criticism that has been made here. But when a man's time comes for parole, the Board sits down and considers that case to make up their minds whether there is a chance that he can succeed outside, and he has to furnish a certificate that he has got a job to go to, and that certificate has to be signed by an employer, examined by an agent and approved by the Board, and some friends of his must come along and sign a statement that they will keep him in their home, they will give him a place to live, and when he comes out he is put in the care of a paid agent, paid by the state to do that job and to keep track of him, and he must report periodically, he must be visited, he must be checked up. And today, Mr. Chairman, there are 1300 people on parole from our state institutions, under the care of state agents, being repeatedly visited, and 82 per cent of those people will come through that parole period, being helped and sustained and watched over, and will succeed and be discharged into the community. Against them we have the occasional failure, but those will be failures anyway. Is it possible for anybody to claim that this Santoro, if he had been held over four months, would in some miraculous way have been improved and restrained from committing the murder that he did?

The nub of it all is, Mr. Chairman, that unless we put them in jail for life they have got to come out, and the important question for society to face is how are they coming out? Are they coming out with a knife between their teeth ready to wreak their vengeance on society, or are they coming out with some kind of a job, established in a home, and some kind of authoritative supervision over them, so that on any indiscreet action on their part they can be taken back and the community thus protected? For every one of those examples of failure I could cite you eight or ten examples

where parole has proved a protection to the community and where men have come out and succeeded and held up their heads like men. Which is the best protection to the "homes with the shadow of crime over them," to have men turned out bitter and resentful and vindictive, or to have them turned out under guidance and under supervision so that they can be taken back?

Now, the second big problem before us is whether this administrative power to release has been abused, and the House Chairman put his finger right on that point. Let us look at Exhibit I, which gives the number of paroles granted to State's prison men with serious cases during 1925. In 74 cases parole was denied absolutely. In forty-two cases the man was paroled because he had come to that part of his sentence at which the law said he must come out, namely, the end of his minimum, and in only 23 cases out of 139 was any time given between the two-thirds and the minimum. Now, I claim that anything less than that would have subjected the Board of Parole to the contrary criticism that they were too severe.

Just a word about leniency. I venture to say that somebody could go down through the records of the courts and the Board of Parole and make just as many well-founded charges that the Board or the courts had been too severe as that they had been too lenient. How about the young boy about a year ago, with one short record to his discredit, that was given twenty-five to forty years in State's prison for a robbery? Mr. Chairman, we cannot lightly barter with the life of a human being or subject him to a sentence of forty years until we are pretty sure that he is absolutely beyond reformation. It is not safe for the community, it is not in the interests of protection.

Chairman SHUEBRUK. Have you got similar figures for the years prior to 1925, Mr. Bates?

Commissioner BATES. I have for 1924. I can furnish those to you. I have not figured them out back of that. I have given you the report of the Department of Correction and on pages 9 and 10 of that you will find the number of cases taken back.

Representative HAYS. May I ask, inasmuch as we have not got 1924, was it tightened up or was it an average year?

Commissioner BATES. I think we tightened up. I have said repeatedly that the courts respond to public opinion and the Board of Parole responds to public opinion, and it has been my observation as I have watched the work of the Board of Parole that they have tightened up, and they should. During the war when work

was easy and good positions could be had, and the public was ready to take the discharged criminal and give him work, it was quite proper that he should go out, but today with these hidden temptations on every hand the Board naturally responds to public opinion. It is well they have the power to, and it would be a mistake if any of that power was ever curtailed by any of the bills that are proposed here today.

I think the Board of Parole has answered in the same way that the courts have any public demand for increased punishment in their action in the last few years.

Now, I have a few more figures. I have attempted to prove what seems to me to be a most important phase of this situation, and you will see those figures on Exhibit K. Assuming that parole is one of the elements of protective penology assuming that every man should go from prison under this system of supervision, the opponents of the parole system still claim that the effect upon the public is that a man by reason of a parole system gets a slighter punishment than he otherwise would. I have gone back to 1884, which was about ten or twelve years before the adoption of the indeterminate sentence as we now have it, restricted indeterminate sentence, and I have attempted to compare the average length of time served in those years, when we had a substantially definite sentence with no supervision, with the time now, assuming that the man was released at the very first opportunity, which he isn't. For manslaughter in 1884 the average term was eight year and eight months, and in 1924 the average term was ten years to thirteen years. For robbery in 1884 the sentence given averaged five years and eight months. The sentences in 1924, on the maximum and minimum basis averaged five and a half years to 7.6 years. Breaking and entering, 1884, the sentences averaged five years and two months and in 1924 on the maximum and minimum basis 3.8 to 5.9 years. Assault with intent to murder, 1884, from six years and four months to 4.2 and 5.9 years in 1924.

Now, I have given in the adjoining column the average time served on those various offences, and you will see that there has been a slight diminution in each case, with the exception of manslaughter, where the average time served on the old system was six years and five months, and on the new system is seven years. When you add to that the restraint that follows every one of these latter sentences in the nature of parole and the possibility that a man may be taken back without any trial in court, simply for some misde-

meanor or some lack of conformity, we submit that even with the new system of parole there has been no diminution of such protection as should be afforded to the community by reason of sentences.

Now, I have not time, Mr. Chairman, to read several testimonies which I wanted to, but you will find them in the brief. I quoted first the recent resolution of the International Prison Congress, and you will find it at the top of page 6 of the brief, adopting and affirming the invalidity of the indeterminate sentence.

At that Congress, which I attended, with 53 nations present the advice of the United States was sought upon every matter, and this resolution which I hold in my hand was framed by the United States Delegation and adopted by the International Congress as a record of the convictions of those others in the matter of indeterminate sentence. Are we in Massachusetts to go back upon the principle which has just now been adopted by the whole world as a sound principle of penology? And I come again to a very interesting report of an investigation just completed in the State of Missouri—(comparative crime statistics were given here yesterday by Commissioner Wilson between St. Louis and Boston, which were all to the credit of Boston)—which report cited releases and pointed to Massachusetts as a successful illustration of the good that could be accomplished where releases were made upon adjustable parole, and I quote also from the paragraph of the Superintendent of Federal Prisons, who said that "The Federal Parole Law has satisfactorily demonstrated the wisdom of having a parole system in penal institutions." Also a statement from the supervisor of paroles for the State of Illinois. These could be multiplied from the experience of penologists all over the world, but they are sufficient to show why parole has been definitely adopted and written into the penological scheme of every modern state.

Now, Mr. Chairman, I want to take the few remaining moments to comment upon the definite propositions that are before this body today. First comes House 303, which, while substantially changed from its original form, will go far to vitiate the whole system of parole, and make it almost impossible especially with regard to the two reformatories to carry on the work as it is carried on there now. Assume that what I have said about parole is true that it offers a protective feature following a release from prison. Is it wise to legislate that we should protect the community from the first offenders and not continue that protection in the

case of a man who is in prison for the second time? We could adjust the penalty, make it twelve, fifteen, twenty or forty years, but whatever it is there should be parole at the end of that incarceration for a period of supervision, in the interests of wise adjustment and protection. This bill will impair the operation of indeterminate sentence, that modern and scientific device of penology. You have introduced in this minimum and maximum law, for example, two periods, one between the minimum and maximum (that is the period of compulsory supervision following the sentence), another period between the two-thirds minimum and the minimum itself; that is the period which gives the sentence its indeterminate character and in which the prisoner may earn his release by good behavior or by prospective reformation. Now, do not take away either of those periods because we need the supervision period, and if there is anything at all in this idea of corrective penology we have got to have some period of adjustment in a man's sentence through which he can work his way out.

Picture for a moment the situation if this bill was enacted. The second time that a man goes into prison, he is immediately differentiated from the rest of his fellow inmates; he has no hope whatever. He has no incentive to work or to reform or to get a job. He has no incentive whatever but to make the worst of the situation, to embarrass the officials in their attempt to reform the rest of those men, and to be a constant menace in that institution. He is going to come out on the 3d day of December, 1930, no matter what he does. Why should he reform? Why should any man reform under those circumstances?

It is well enough for my brother to say he is not there for reform, he is there for punishment. If that theory is sound, put every one of those prisoners in jail and keep them there for life, if you think you could deter the rest of society, but you never can. They had 200 odd crimes punishable by death in England, and what did they do? Juries would not convict. And when they had punishment by burning with an iron they used to burn with a cold iron in order to fulfil the law. It is absolutely necessary that we should have that adjustable period within the sentence, just as much as we should give them physical examinations and try to put some decent uplifting influence into their lives, and I do not believe that this committee is by the passage of that bill going to make it absolutely impossible for the institutional authorities of the state to carry on the work of individual reformation.

Further than that, if it means that a man has got to go to the reformatory to do at least two and a half years, it will have the result that judges will refuse to send them there. What is the situation today on a misdemeanor, or a defendant selling drugs, or breaking or entering, or a pickpocket? The average house of correction sentence ranges from six months to perhaps eighteen months. The complaint has been with us, Mr. Chairman, that we hold men too long at the reformatory, that they go up there with the expectation they are going to stay a few months, and find they have got to stay a year and a half or two years, or whatever period in the judgment of the Board is necessary for their improvement or reformation. If you increase that to two and a half years, you not only will add such a number to their population that you will have to build a new building, but you will have taken away from the institutional authorities—and the superintendent is here today and I hope he will tell you something of that side of it before adjournment—you will take away an important aspect of that reformatory and change that institution into nothing more or less than a junior state prison.

With regard to the three recommendations of his Excellency the Governor, I think I can cover those in a very brief time, Mr. Chairman. The first one has to do with the matter of county parole. I don't know whether this Committee has given that matter very close consideration, but today there are three kinds of county parole. The first is contained in Chapter 127, Section 130, and provides for a definitely stated commutation, so many days a month on certain sentences, so many days a month on longer sentences. Then there is contained in Section 140 of Chapter 127, a provision that a man arrested for a certain list of very trifling crimes that is contained in that section that used to begin, "All rogues and vagabonds, pipers and fiddlers," and so forth, those men may be pardoned by the county authorities without the consent of court or the District Attorney. In other words they may have six months taken off the end of their sentences. And then Section 141 provides that all other criminals in those institutions may be released with the consent of the probation officer and over the signature of the judge in the lower court or the District Attorney of the higher court to the extent that the last six months of a sentence may be removed.

I believe that the keynote of parole lies in supervision and the great difficulty with county parole today is that the various counties

have not been equipped to carry out the idea of supervision. I suggest that all the Governor had in mind was that an automatic reduction of county sentence by lowering them by six months was not good penology, and I am inclined to agree with that; and I submit we might well consider this recommendation provided we are careful to retain this commutation statute which offers an incentive to the person to behave himself.

I understand my friend's later suggestion is that certain of those powers be taken away from the County Commissioners and handed over to the Board of Parole. I make no suggestion on that. I think that the time may well be here when the whole system of taking off six months county sentence can just as well be done away with.

On the second recommendation that parole be denied second term felons, I think undoubtedly what his Excellency had in mind there, and what most of the people who think on the subject have in mind, is that a man who commits a felony for a second time is not entitled to much in the way of time off, but I do not believe that he meant or that anybody meant that the necessary period of supervision which should follow every prison sentence as a measure of protection should be denied even to the second term felon. If, therefore, that recommendation means that the two-thirds rule should not apply in the case of felons, but that they should come out on their minimum for a period of supervision, I do not believe anybody would object to it. On the other hand, I do not believe it means that those men should be kept to their maximum and not released at the end of their minimum. As a matter of fact, it will make very little difference, because I think you will find on examination that 90 per cent of cases of that sort stay until the end of their minimum anyway, because the Board realizes that there is a limit to the benefits of parole.

As to the third proposition, that this power be suspended in case of emergency, I think if there is ever a case where we need wisdom and experience and careful handling it is in the case of an emergency. I had no question whatever that that power would ever be abused by any governor, and I feel quite sure that most parole boards would be glad to have the assistance of the Governor and Council of Massachusetts, and therefore it is immaterial to me whether action is taken under that section or not.

Representative HAYS. That could be accomplished by telephone call, couldn't it?

Commissioner BATES. Yes, just as well, and I do feel that it establishes rather a dangerous precedent to allow the executive to suspend the operation of any law which the Legislature has passed. I feel it is a rather arbitrary and dangerous precedent.

Mr. Chairman, that completes what I had to say, with the exception that I hope before this Committee passes any judgment upon the conduct of the Parole Board they will do us the honor to examine some of the successes and some of the protective features of it and not judge us by the two or three failures which have been brought out here. If I had the time I would like to take up what is always more interesting and that is the individual case, and show how time after time the prompt action of the Parole Board and our agents has protected the community from the possible commission of crime, in the prompt taking back of people who are not responding to this kind of treatment. And, after all, Mr. Chairman, is it not time that we put behind us once and for all the notion that vindictiveness and punishment and the old "treat 'em rough" idea will ever get us anywhere?

I ought to thank, I suppose, my brother here, for reading from that little pamphlet. But, Mr. Chairman, I was never more serious in my life, and I was never more serious than I am now, in saying than many times it has come over me, as it must have come over you, how little there is in common between the ordinary present practice of the criminal laws and the teachings of the New Testament. And that old story that was given here today, I would match that with the story of the prodigal son, and the story of the woman that was taken in sin, and that great mandate by the Master, "Judge not that ye be not judged."

NOTE:—Mr. Bates submitted in his brief the following:

For example, at the recent International Prison Congress in London a resolution was adopted approving the indeterminate sentence, as follows:

"The indeterminate sentence is the necessary consequence of the individualization of punishment and one of the most efficacious means of social defence against crime. The laws of each country should determine whether and for what cases there should be a maximum duration for the indeterminate sentence fixed beforehand. There should be in every case guarantees and rules for conditional release with executive adaptations suitable to national conditions."

"The control of persons put on probation or conditionally released should not be in the hands of the police. This control should be exercised either by private societies financially supported and supervised by the State, or by official or semi-official organizations, for instance by persons paid by the State and placed at the disposal of the courts, without connection with the police. For all persons put on probation, or released conditionally, supervision should be obligatory. Submission to supervision should be voluntary only when the sentence has been completed."

A report of a searching investigation into crime conditions in the State of Missouri contains the following paragraph:

"The policy of the present administration is not to grant many paroles. It is to be remarked that the administration does not want to undo the work of the courts by granting paroles. Little can be said for such a policy, because after all parole releases are infinitely more desirable than the present absolute and final releases. . . . Such a policy is indefensible and runs absolutely contrary to the best practice in prison administration."

The Superintendent of Federal Prisons, in a recent article in the American Bar Review stated:

"The federal parole law has satisfactorily demonstrated the wisdom of having a parole system in penal institutions. When a man commits a crime he should be punished to correspond with the degree and measure of his crime; but in the lives of many men parole is a psychological incentive to reform. Parole serves . . . to break down the embittered and rebellious nature a prisoner often adopts toward society upon his release, and the public adopts a much more tolerant attitude toward the paroled man than toward the man who has served his full sentence."

Following is a statement of Mr. Will Colvin, Supervisor of Paroles for the State of Illinois:

"The parole law of the State of Illinois is acknowledged to be the outstanding leader of all laws governing the return of those convicted of penal offences to society. The results of its demonstration are acknowledged by those who, by their knowledge and experience are best able to judge, to be the most satisfactory, not only of any of the states of the Union, but of the nations of the world. . . . The outstanding feature of the Illinois parole law is the after-care it gives to those who are admitted to parole. It is this feature of the law which has more particularly attracted attention. After-care is the real strength and backing of every parole law."

Following is the experience of Ontario, given by Dr. A. E. Lavell, chief executive officer of the Ontario Parole Board, who strongly maintains that the critics of the system were unfair:

"Last year 86 per cent of those paroled re-established themselves, and only 14 per cent of those given similar opportunities to get back into civil life proved failures."

REMARKS OF HERBERT C. PARSONS, DEPUTY COMMISSIONER OF PROBATION.

On the Bill (H. 242) Providing That Certain Cases Shall Not Be Placed on File.

I hope, Mr. Chairman, at some stage of the extended hearings I shall have the opportunity to present some of the facts in regard to probation and the suspended sentence which have been in some instances overlooked and in other instances grossly misrepresented. There are so many of the bills before you in which there seems to be reason to discuss the probation service and the right to suspend sentences and the larger question of free discretion of the court that I will choose not to discuss it at this time but ask to have that opportunity later on.

Chairman Shuebruk. We will see you have the opportunity.

Mr. Parsons. That being assured me, I appreciate it very deeply. I want to enter objection to House Bill 242. While it also involves the question of the discretion of the courts in its larger phases, I understand from the Registrar of Motor Vehicles if the right to place cases on file is denied the court the alternative is to place the cases on probation, meaning that in these very many cases where the court now feels that the ends of justice are met by placing on file, that door being closed, the larger door is opened wide to a very great increase in the number of probation cases collected for no particular reason or no particular rule but because it is the easier way out if the door of filing is closed. At that point I want to interject an observation.

There is a very mistaken notion in regard to the disposition of those persons that are in the probation service in regard to the number of cases that are placed on probation. The assumption is rather general that the people who are interested in the probation service magnify the value of their work by the number of cases placed in their hands. I want to correct that, and to say that consistently throughout the number of years that I have been in the service, the commission that I represent has been pleading for discrimination in the selection of probation cases. We should protest against the opening of any floodgates of cases being placed indiscriminately on probation in the way which is offered in the argument in this case. If there is no reason for filing cases, if the court should be denied the right to place cases on file on merit, which they

now see, then certainly some disposition ought to be made of them instead of simply passing them to the probation pile.

ON THE BILLS (H. 303, H. 246, H. 247) AS TO PAROLE AND PROBATION.

Mr. PARSONS. I wish, Mr. Chairman, although it is a bit out of my field, to enter my opposition to House Bill 303 in relation to parole, because for reasons very fully stated to you by the Commissioner of Correction and the Chairman of the Parole Board, I feel that any invasion of this power runs contrary to the necessary policy of the state for the protection of its life and property.

Mr. Chairman, may I take this opportunity, now that I have the chance to say a word, to make some observations in regard to the probation matters which have been under consideration here, especially in relation to the bills, House 246 and House 247, which deny to the courts the power to place on probation or to suspend the execution of a sentence if a person has ever before been convicted of a sentence punishable by imprisonment.

Chairman SHUEBRUK. For more than one year.

Mr. PARSONS. I understand that the modification has been made in those bills to relate to offences punishable by imprisonment for more than one year, although the bills originally did not make that distinction.

These bills propose such an invasion of the discretion of the Court and the use of probation and of suspended sentence, which is always accompanied by probation, that I feel justified in taking a little of the Committee's time in discussion of the probation policy and its results in this state. They have come very much under criticism in the current discussion and been made the special object of attack, and I think the Committee should have called to its attention some of the features of this system in Massachusetts.

Massachusetts originated the idea. In 1878 the word "probation" was first written into the criminal law, and it was done by the Legislature of the Commonwealth of Massachusetts, relating only to a single court in the City of Boston. In 1891 the Legislature in its wisdom—a phrase that I am always very glad to use—provided that every municipal and district court in the Commonwealth should have the power to place in the care of a probation officer any person convicted of any offence on terms and

conditions to be fixed by the Court. That is the simple language of the probation law which has persisted in Massachusetts from 1891 down to the present time. It was extended without any modification in 1898 to the Superior Court, so that at the end of the last century this state had in every court where an offender is tried for an offence, or a juvenile is heard on charges of delinquency, a probation officer of the Court, which was clothed with the broad, unlimited power to place any person in the care of its probation officer on terms that it might fix.

Up to this time, Massachusetts was the only state government on the face of the earth that had this feature in its law. Since that time, Massachusetts leadership has been recognized almost throughout Christendom. Every state of the United States has in some measure followed the example of Massachusetts. Foreign governments, notably the English Government which we are hearing very much cited here as setting a high example to us, have studied the Massachusetts system and adopted it, and today the system of probation is being very rapidly extended with the approval of the English Government throughout the courts of that country.

The last session of Congress prior to the present one, enacted a law placing in the Federal judges precisely the same power that the Massachusetts courts enjoy. It followed the language of the Massachusetts statute. It was discussed with great fullness in both branches of Congress. It won its way unanimously through the Senate. It was passed by the required two-thirds vote in the House of Representatives, and on the 3d of March was signed by a former governor of Massachusetts, now President of the United States, without any question as to it. I wish to specially call attention to the fact that it precisely followed the language of the Massachusetts law which places in the court an unlimited discretion in the use of this power. So much as to the progress of the Massachusetts device, if we call it such, and the leadership that has been accorded to Massachusetts.

I want to call attention to some of the consequences in Massachusetts. I will refer to some of the consequences that we heard discussed here a bit later,—the criticisms of them. I wish to call attention to one or two of the affirmative sides of this use of the power by the courts. One of the outstanding consequences is that while twenty-five years ago we had a prison problem in Massachusetts in the way of accommodation of our prisoners and were

expanding our prison accommodations, because of the adoption of this rule, we suspended building additional prison accommodations in Massachusetts and in twenty-five years there has not been an additional cell built in the Commonwealth. There has crept into no tax bill in Massachusetts for a quarter century a penny of public charge for the expansion of our criminal accommodations. It has been due, not so much to the improved conduct of the people of this state, as to the fact that a different way of dealing with the offender had been written into our law.

Nevertheless in that period, as is perfectly obvious, we had all the elements necessary to add greatly to our prison population. I do not mean to repeat the figures that you have already had given you as to the comparative prison population. The outstanding fact is that we found a different way for caring for the great number of our offenders whose offences were not of the kind to cause any serious need of their being incarcerated.

The great financial saving obviously is one to be counted to the credit of a system which was grounded, of course, upon the humane idea that in the procession that moves through the criminal court there are a great many persons whose offences are not of such a criminal character as to require their incarceration. It is very true that there was a humane purpose at the bottom of it, but is has stood the test of forty years in Massachusetts practice, and demonstrated, as I propose to show in a moment, that the Commonwealth has not suffered in consequence.

Now, I want to apply one or two tests to its operation. The first one is, of course, in the behavior of the persons who are released under the care of the probation officers and the courts. This is not left to a general observation. There is the requirement of a monthly reporting so that it is known how these people conduct themselves through their probation period. It is known how many are surrendered, how many are discharged by the court, or how many have their cases filed at the termination of the period fixed by the court for their probation.

About 11 per cent of the persons are surrendered to the courts by the probation officers for failure to conform to the conditions of probation. This is an exercise of that important power vested in the probation officers to arrest the person who is on probation, if he does not conform to the conditions, and return him to the court. It is a fair test of the faithfulness of the probation officers to their duty that 11 per cent of the cases are so sur-

rendered to the court. I think it is a more direct testimony to the effectiveness of probation that of the persons who are submitted to the care of probation officers when they come to the termination of that time when the court has felt it necessary to keep them under supervision, 83 per cent are discharged into the community free from any restraint.

Of course it may be said that the behavior of people under supervision is not a test of their behavior in the community afterwards. I call attention to the fact that under an act of the Legislature in 1923 a study was made of the careers of persons subsequent to their probation, going back eight or nine years, and following their subsequent careers to find what their behavior was in the period subsequent to their period in the care of probation officers. Here I think, Mr. Chairman, we come to a test of that statement which has been made and which has been echoed here, to this effect—I am quoting now from a pamphlet, "Community Versus Criminal," in which this statement is made:

"The probation system which in theory may be all right, and which is doubtless founded on humane principles, has degenerated into a breeder of criminals."

That statement I not only challenge, but I want to show you how far from the truth any such statement as that is.

Representative HAYS. Who is the author of that, Mr. Parsons?

Mr. PARSONS. I will read you its full title. "Community Versus Criminal, and the Law, its Loopholes, and the Facts in the Case, by Frank A. Goodwin, Registrar of Motor Vehicles for Massachusetts." I am representing one of the "loopholes." The result of the examination is published in a report which was printed as Senate 431 in the documents of 1924. Now, we are dealing with a people whose lives were studied subsequent to their probation period to find the extent to which it is true that this process had been breeding criminals. I am eliminating the "drunk." We have a very cheerful way in this discussion of eliminating the drunk. I wish we only could eliminate him as a social problem, but in our discussion we will eliminate him, and we will eliminate the non-supporter and vagrant, and we will get down to those who committed what we call serious offences, and we have a group of nearly 500 adult males, who were put on probation back in 1914 and 1915, and whose careers were studied in 1923 and 1924. We find that as to those who were not surrendered—I am not including those, of course, who were surrendered and committed by the court for

failure to observe their probation terms—those who were carried through their probation period and discharged back into the community to become these criminals bred by the process of human helpfulness which had been exercised, out of them 74 per cent have never again appeared in any criminal court in this Commonwealth, and 97 per cent of them have never committed any offence causing them to be committed to a penal institution. The extent to which this process has bred criminals, as to serious offenders who were put on probation in that period, is 3 per cent, and if there is any other process of correction that can compare with that, I am very ready to have the comparison made.

We find, further, that at the end of the period when they were being inquired into that they had not only been free from court record and free from offence which caused them to be committed to penal institutions, but 83 per cent of them were regularly employed in industry.

As to the women—to run over some of these findings of that very close personal study—74 per cent of those who were on probation for serious offences have had no subsequent court record, and only 9 per cent got into any criminal institutions. As to the non-support feature, which I propose to discuss a little more fully presently, it is discovered that entire compliance with the orders of the court was secured in 68 per cent, and a degree of family support was secured in 82 per cent, and that only 20 per cent of those who were dealt with by this process, non-support and domestic relations cases, have ever reappeared before a court on the charge of non-support, indicating a rehabilitation of the family which is the end sought in the process.

Coming to the illegitimate child group, one of the most difficut to be dealt with, and in which probation, of course, is an essential feature, we find that 65 percent of the adjudged fathers paid the requirements of the Court in full, that 20 per cent of them paid partially, and that only 15 per cent utterly failed, and that 76 per cent of those fathers of illegitimate children have had no subsequent court record of any kind. If I should go into the elaborate study of juvenile cases, I could simply rest upon the showing of many of these juveniles. But you are interested in whether we are producing adult criminals or not. The fact is shown here, that of these persons with an average of four years of adult life after their juvenile period, and having been on probation as juvenile offenders, 78 per cent have never acquired a court record. That is rather a

rapid fire view of the salvage that is accomplished by this process in our courts.

The other test, and the one that perhaps has the greatest interest at the present time, is the effect on the community in general. We are not so much interested, we say, in the individual case, although the extent to which individual cases are forced into prominence has some interest for us. We are concerned to know how Massachusetts has compared with other states not similarly using this power, or how Boston, this great city, which is the city where this power is so freely used, compares with other cities where it is used very little, or not at all. It may interest you to know that on the 30th of September—and I presume this may give concern in some quarters—on the 30th of September last, there were 891 persons locked up in correctional institutions of Suffolk County—Deer Island and the jail on Charles Street—and that on that day there were 6193 persons who had been convicted of offences who were in the care of probation officers. That is, you had your correctional population behind walls and bars to the number of 891; you had the out-door process of correction applied to convicted offenders at that moment in the City of Boston to an extent nearly seven times as great, 6193. It is rather a startling proposition, that you can so largely care for your offenders in the open. You question whether it is a safe thing to have your offenders cared for out in the community to that extent. There is only one way of testing that, and it is to compare it with those cities where such a process is not used at all, or where it is used so moderately that it does not count at all.

I want to say from observations I have made that I believe there is no city of its size and character, assuming that there is any other city of the character of Boston—I will eliminate that part of the phrase—there is no city of its size in the United States of America that has as little reason to be concerned over the violent offences which have startled the whole of the world in these recent days. I want to make a comparison with one city. It is a comparison that was invited by figures given you here last night by the Commissioner of Police, and that is the City of St. Louis. In 1925, he told you last evening, there were 100 murders in St. Louis. There were 19 in Boston in 1925. There were 1087 holdups in the City of St. Louis; there were 214 in the City of Boston.

The pertinency of my calling your attention to these facts is that St. Louis has no corresponding process of caring for its adult

offenders in the open and it is a fair test of the statement that when you have seven times as many convicted offenders out in the open as you have locked up, you are demoralizing the community and undermining the respect for life and property in the community, to compare that situation with a city which knows nothing of this process and find we have only a fraction of disorder here. Certainly it is not the system that is at the foundation of our troubles.

I would like to go to some other cities. In one very considerable city—I am not going to name it because I don't want to get into controversies with people from other cities needlessly—I saw in a city far remote from Boston a little over a year ago a great human storage building being built at the expense of over a million dollars for the county in which it was placed. The purpose of that institution was the incarceration of whom? Offenders, male adult offenders, whose imprisonment was not to exceed one year. It was to receive hundreds of men who were being committed for offences calling for no more serious sentence than one year imprisonment. We have not any need of any such institution in Massachusetts, because we find that that sort of an offender can be cared for, not only to his own benefit, but with safety to the community, in some other fashion than fixing the burden on the taxpayers of his incarceration in idleness in what is no better than a cold storage institution.

I want now to proceed to the question of domestic relations. Here is a field in which the proponents of this bill evidently have not ventured at all; I think it must have come to them as a great surprise that one of the features of the probation service in Massachusetts was the dealing with domestic relations cases. When they could say, as they did say of the bills proposed here, that they were harmless bills, that they were not drastic, it shows that they had no conception of what they were doing in this field of offenders, the non-supporters of one kind and another.

We used to lock up the non-supporter. When Massachusetts said that not to support one's family was a crime against the community as well as against the family, we proceeded to lock him up. By that process, we made sure of two things. In the first place, we made sure he could not support his family, and, in the second place, in view of the fact that he would not support his family, the public undertook his support for a period of idleness. In 1911, we wrote into our law the uniform desertion act, the feature of which was

that the person found guilty of non-support of his family, of his wife, and his children, should be held to their support. That was the dawn of common sense. It carried the necessity of the Court's writing an order, based on an investigation as to the needs of the family and the earning power of the defendant, that he should supply through the probation officer a certain amount of money every week for the support of his family. You may be interested to know that in the first years of the operation of that act, the collections for the support of families from persons on probation were a matter of thirty or forty thousand dollars. In the year which closed the 30th of last September, the collections for this item alone:—namely, the support of families, by probation officers, was $1,206,000, collected from persons under orders of the court.

We brought into that group in 1913 the father of the illegitimate child. We changed our bastardy law to the basis of support—the support of the illegitimate child. The penalty, to be sure, rested on the adjudged father of the child, but we set out on the social errand of securing the support of the child. And then—perhaps I ought to say it with some humiliation—in 1916 we brought into that group the non-supporter of indigent parents, haling into court a person guilty of not supporting his worthy parents, and we had a probation service for its enforcement and operation.

You may say this is wasted fire because it is not proposed to repeal those laws. I want to say there is not the slightest question but what if these bills had gone through in their original form, you might just as well have repealed the whole three of the group, for they would have been practically inoperative; and I am not saying that on my own judgment, but on the judgment of the members of the judiciary who had most to do with the framing of these laws.

It was proposed that because persons whom we get for non-support under these various headings quite likely, and indeed, as a matter of fact actually have, committed offences punishable by imprisonment, you shall not put the law in operation because they may not be put on probation, which is an essential to the system. And now, under the modification of the bill where it says that the person shall not be put on probation if he has committed an offence punishable by imprisonment for more than a year, I think it would puzzle anybody to say how far we were undermining a process which has lifted a great burden from the public and accomplished that most desirable of all facts, the support of people by those who are held legally and morally and socially for their support.

Suppose we get a man in court on the charge of non-support, and somewhere back in his career it is found that he had committed larceny from the person. Under the operation of the bill as now modified, we should have to throw up our hands and say, "We can't put this person under the operation of our non-support law because he is not qualified for probation." The court has been deprived of the power to put him there.

Suppose we have a person adjudged the father of an illegitimate child, and under the law recently changed we can hold him six years on the original orders for the support of that illegitimate child, desirable as a social feature, and desirable as a penalty upon him, and then we find that back in his career he had committed the offence of lewd and lascivious cohabitation—and it would be a very good gamble that you would find that in the case of the father of an illegitimate child—again you must throw up your hands because that is an offence punishable by more than a year of imprisonment.

Suppose we have brought into court that negligent son or daughter who is not caring for the support of his or her worthy or needy father or mother, and we find that this son somewhere back in his career had been guilty of the crime of larceny of a motor vehicle. What can we do? We would throw up our hands and say, "Your larceny of a motor vehicle excuses you from the obligation to support your indigent worthy parents."

Suppose in any one of these groups the person could be shown to have had a juvenile offence. Why, the levels of society from which the non-supporters are drawn, the non-supporter of his wife and child, the non-supporter of his illegitimate child, the non-supporter of his worthy indigent parents, abound in the names of people who have been known to the juvenile courts. It is a possibility which is not only very great, but it is an actuality, that we find somewhere in their career a juvenile offence which could be disposed of by sending them to an institution for juvenile delinquents for more than a period of one year.

So, Mr. Chairman, I want to say in passing, because I do not want to dwell too long upon this, that while it is by no means a certainty as to the extent to which the passage of these laws would undermine the future of our social legislation, it is certainly a very great extent.

There is another group, and that is the man whose fine is suspended and he is placed on probation to secure the payment of the fine. We used to send him to jail, and we have sent him to jail on

the basis that it was worth 50 cents a day to stay in jail, which I always regarded as a fairly moderate estimate. We sent him to jail with the requirement that because he owed us the amount of his fine, he should stay in confinement. That is, in view of his being in debt to the Commonwealth, the Commonwealth would undertake his support for a period of time, and at the end of the period, we discharged him. Now, the Commonwealth has said the thing to do was to make that man pay his fine, and the purpose was, of course, to lift that load from the backs of the taxpayers of the Commonwealth. It may be interesting to know that during the past year, the probation officers have collected the sum of $358,025 from persons whose fines were suspended and they were given an opportunity to pay them. That is not a very large sum of money, but it represents some 1200 years of imprisonment that the Commonwealth would have to provide for if we did not have probation in that phase of its operation.

Moreover, I want to suggest that the difficulty with this test of fitness as to a person being put on probation, even in its modified form, is that it is a wrong test. The Court has the culprit before it, and the Court is confronted with the always vexing problem of what is the thing to do with this offender, and the judge has that to dispose of. He must dispose of it not on a study of the conditions that are there presented, but he has to dispose of it on a rule as to some act in that person's life at a period, however remote, either when a juvenile or an adult, and is completely barred from dealing with it on its merits. If there is any value in the disposition of cases by the ordinary process, it is that they shall be dealt with on the basis of existing conditions, of things as they are, instead of being entirely confined to some incident, minor or major, in the more or less remote past.

We have had cases cited here, and I am not going into the discussion of cases. I am not ready to share in the process of reasoning from an instance to a general conclusion. I admire the thoroughness of the search that has been made. I have had a chance to observe it in my own office where are gathered the criminal records from all over the state. I admire the thoroughness with which these records have been searched for the finding of something upon which a case could be based. We are told that there are 86 cases covering a period apparently, in their careers of some fifteen years, 86 out of three million and a half that have been disposed of in the courts of the Commonwealth in this period. I am not willing

to risk conclusions as to public policy or offer any suggestions to a committee of a Legislature on the basis of 86 cases out of three million and a half possible cases to be studied.

Mr. Chairman, I happen to be one of those who are on the side of the reformation of the offender, and I suppose I am under the possibility of being classed with those who are regarded as "sob sisters," and "sob brothers."

Representative HAYS. You couldn't very well be both.

Mr. PARSONS. Well, I am here in a representative capacity, Mr. Chairman, and we have some very worthy women probation officers who would object to their exclusion from my statement. I do not know anybody who says that reformation is the chief purpose in dealing with the offender. We are charged with that. It is said that the idea is prevalent that to reform the criminal is the main end of the criminal law. Well, now, we who are on the extreme of the reformation side in dealing with the criminal are perhaps the most keenly interested to see that reformation shall be held in its right place, that it is not the main end. It is not the main purpose. Neither is punishment. Some may state so—that punishment is the thing, that we are undertaking to deal with the defendant simply to wreak vengeance upon him. It is not the human privilege or prerogative to punish. Both punishment and reformation are incidental to a process of the criminal courts and correction to protect your life and my life, our property and the peace of the community, and every system and every feature of the system which is discussed here, which stands in the code of our Commonwealth, must justify itself by the test of its success in accomplishing that end.

Mr. Chairman, I want to recur to the comparison which I made, which might be very much expanded, to demonstrate the fact that the policy of Massachusetts, based on the humane impulses of the people, but not on abdication from the seats of common sense and judgment, is justified by the fact that we live in a peaceable Commonwealth, we live in a secure city, and compared with any other Commonwealth or any other city in the United States of America, we have no reason to abate by the slightest degree that policy of humanity and helpfulness and constructiveness which we group under the head of reformation of the offender. The facts are all on that side.

Now, Mr. Chairman, there is just one feature, and I think I shall be excusable if I discuss it as the real issue that you have pre-

sented to you. It has been running all through this discussion. It underlies very much of the proposed legislation, and it is the really vital point. It is the question of continuing discretion in your courts. I should like to say a thing or two about the courts of Massachusetts. I have very close personal acquaintance with the judges, and I trust it has not been a contaminating or enervating contact that I have had with the judges of the Commonwealth of Massachusetts, leading to a close personal acquaintance with them; and I have had, if you will allow me to say it, an opportunity to observe the courts in other states in the country to a very great degree in recent years.

(Short recess during a roll call.)

Mr. PARSONS. I was saying, Mr. Chairman and Gentlemen of the Committee, that the vital principle under consideration here and the real question of policy concerned our continuing discretion in the courts of our state. I think I said something rather complimentary about the courts and in comparison with the courts of any other state, warranting our continued confidence in them. I am not prepared to say that the courts of Massachusetts make no mistakes. I am concious that in some cases mistakes are made, and I want to offer the suggestion that they are not all made on the side of leniency, they are not all made on the side of softness. When I found a twelve-year-old boy in the Charles St. Jail, having been sentenced to thirty days in jail for the heinous offense of disturbing a school, I knew the court had made a mistake. It had acted not only wrongly, morally speaking, and injuriously to the boy whose contacts were of a kind to damage, if not to destroy him, but it had acted in violation of the laws of the Commonwealth. I am not prepared to say that because of such an incident as that we ought to deprive the courts of discretion, nor do I think it is warranted from the standards of any evidence of individual mistakes as they may seem to the person who is in the fortunate position of not being in the responsible place of confronting the problem that is before the judge.

Now, Mr. Chairman, I believe that any diminution, any infringement of the discretion that we place in our courts is striking at the very foundation of our safety in the administration of justice. I oppose it for two reasons. First, it contains within itself possibilities of grave injury to the people of the Commonwealth. And, secondly, because in any diminution of the discretion and confidence, power and authority we place in our courts, we are declaring

to the world that our Massachusetts policy of the life appointment of judges, of appointment rather than election of our judges, is a mistake; we are saying that these systems that we have established in Massachusetts, which are easily justified by our experience as I have undertaken very briefly to show here, have all been a mistake, that we cannot trust our courts, we have got to make them mechanical, we have got to put them in a tight corner, both indicating that our courts are not safely chosen and that they are not to be trusted in the exercise of such a system as we have here.

There is one more point on that feature, Mr. Chairman, and I am not going to detain you longer on this. I have offered the suggestion elsewhere, and I offer it to you, that you cannot destroy discretion in dealing with the offender. It is going to be exercised somewhere. If you remove it from the court and make the court a mere automaton—I mean by the court the judge—you are going to find it enlarged in the jury room, because we know in spite of whatever instruction juries are given that they will take into account the consequences of their verdicts. If those consequences are fixed and serious, and no discretion is left to the judge in the determination under the conditions surrounding the case as to what ought to be done, it is sure as anything can be that you are going to get an enlargement of discretion in the jury room. And another place I want to suggest you will find an enlargement of discretion will be in the police. If the police know that the end of the road on which they are starting the offender, if they arrest him and put him through the process, is a certain definite and rather servere one, they are going to exercise a wider discretion than they do now in determining whether they will make that arrest and carry the case through.

Mr. Chairman, I do not think that the Commonwealth of Massachusetts would be safer with its discretion lodged in the jury room as to the consequence of verdicts, or in the police as a consequence of their decision as to what to do with the offender who has fallen within their grasp—I do not believe it is safer there than it is on the bench, in the full view of the public, and exercised by a character and quality of men who in judicial positions are not matched anywhere on the face of the earth.

I beg two things of the Committee in this relation, Mr. Chairman, and I only beg as a humble citizen of the Commonwealth; in the first place, that we do not discredit our courts before the world; that we do not mar our courts in the exercise of that discretion

which is the most precious feature, and the most valuable feature, in the whole process of dealing correctionally with people. And the other thing is that Massachusetts by reason of raising past and carefully attuned instances, shall not be deprived of the distinction it has been given the world over, of having led, not only in a humane but in a sensible and effective dealing with the offender against its laws and against its people.

CRIME AND CRIMINAL LAW.

By THOMAS C. O'BRIEN, *District Attorney, Suffolk District.*

The hysteria over the sharp rise in the number of crimes of violence committed during the last few years has compelled the best minds of the bar to give the problem of criminal procedure at least passing attention. While the various Governmental agencies have all been the subject of hostile criticism, the judges and prosecuting attorneys have been forced to bear the brunt of the attack of the would-be reformers, and probably justifiably so.

There has never been much interest shown by lawyers of standing in the administration of their criminal law. Their life work is concerned with the civil branch, and they have exerted their efforts in reforming civil procedure, leaving the more important branch of criminal procedure to be manhandled by their brethren who have been interested in blocking the administration of criminal justice on behalf of offenders against the law.

A mere tinkering with the present system will avail nothing, and the best lawyers must have a sustained interest in the problem if lasting good is to result. There must be a complete understanding in the minds of all attacking the problem: first, of the community which produces the offender, its laws, its morality and its temptations; second, the police who maintain order and apprehend offenders; third, the prosecution; fourth, the courts and juries; fifth, the probation system; sixth, the penal institutions; seventh, the parole system, with its after-care of discharged prisoners.

Only a complete understanding of these integral parts of the so-called crime problem enables anyone to discuss intelligently causes of crime and the so-called corrective and preventive agencies.

For nearly 15 years, it has been my privilege to deal with offenders as a public official,—as a member of the Board of Parole releasing convicts from state institutions, as deputy director of prisons, supervising their care and treatment in the penal institutions and their after-care on parole in the community; as commissioner of institutions, directing the policy of treatment of misdemeanants and juvenile delinquents in the City of Boston. As district attorney of the Suffolk District, my office has prosecuted more offenders than all of the other district attorneys of the state combined. Suffolk Superior Court deals annually with 58 per cent of the criminal cases of the Superior Court of the Commonwealth.

Observations of the progress made in the extension of the probation system, the improvement in institutional care and in the parole system, cause me to note the unfavorable comparison between those agencies employed after conviction, with the machinery for the detection, apprehension and prosecution of the offender, and the administration of the criminal law in our courts of justice.

The police, prosecution and the courts have not kept pace with the other public agencies dealing with the offender. Congestion of court dockets until recently made impossible the actual trial of the majority of cases. District attorneys were compelled to trade with defendants in order to dispose of cases. The drafting of district court judges for service in the Superior Court has remedied this condition. In the Suffolk District six judges now sit with juries and those cases to the trial of which fanatics have succeeded in compelling the courts to give precedence, are cared for by the district court judges, thus making it possible for the Superior Court judges to speedily try the more serious crimes.

In four years, 32,000 cases have been disposed of through the District Attorney's office of the Suffolk District, and practically no delay is experienced in trying crimes of violence, or crimes in which it is felt that swift and certain action is essential. There have been during the four years 5050 trials; last year, 1644 trials, as against a year's maximum number of 400 trials previous to 1922. These trials have been conducted under the same criminal practice and procedure which obtained one hundred years ago, with the exception of the simplification of pleadings. The trial of facts and law before courts and juries is still restricted and hidebound by legalisms and technical intricacies, which bar a proper disclosure of facts and furnish a shield for the guilty.

Fear of reversal in the Supreme Court compels trial judges to resolve doubtful questions as to the admission of testimony and instructions to the jury in favor of the defendant, for the Government has no right of appeal. What reason is there for denying to the Government a review of the court's rulings of law, at least as a precedent for other cases? Why not permit amendments of complaints and indictments?

Legal technicalities came into being as legal safeguards for innocent accused persons, because of the horrible punishments prescribed for convicts, yet they are still observed in our courts of justice, despite the fact that today individualization of punishment is the policy after conviction. There is just ground for complaint

that the toleration of these one-time safeguards now retards and defeats the ends of justice, and many of these hurdles placed in the way of conviction might well be removed. No one will deny that the object of trial is to disclose facts, yet one would think that trials were conducted for the purpose of preventing guilty persons from being punished.

However, the well-intentioned reformers who think of public security to the exclusion of individual life must bear in mind that there must be a compromise between these warring elements, and if they would increase the punishments to be inflicted after conviction, there is no hope of the courts abandoning legalisms and technical intricacies.

Our jury system has been under fire, and solely because little care is taken in the selection of citizens for jury service. The removal of exemptions by the Legislature two years ago has had no noticeable effect on the type of jurors, nor has the tinkering with the mode of selection. Were we to find in jury boxes intelligent, responsible citizens of "sound judgment and good moral character", there would be less "hanging" of juries. Unless qualifications for jury service be given more attention, a non-unanimous rule might well be considered, with the hope that at least ten of the twelve would measure up to the requirements of the law. I believe that few persons are now excused by the courts from jury service, but I fear that many otherwise estimable citizens succeed in evading service through influence with jury selecting bodies.

Peremptory challenging, which is more or less of a farce, should be considered. In a single trial in this district where there were five defendants charged with banditry, the Government was allowed 110 peremptory challenges and the defendants a like number. The defendants' attorneys were striving to secure a "gang" jury, and the Government an "anti-gang" jury. Impanelling resolved itself into a joke. Neither Government nor defendants strove to secure in the box what the law contemplates,—a cross-section of the community.

Bail conditions, adversely criticised by the Attorney General in his report of the Suffolk District, are not peculiar to Suffolk. Difficulties experienced in this district in enforcing executions, resulting from suits against sureties, are found throughout Massachusetts. Three years ago I requested relief through the Legislature and requested a study of the bail situation. The Attorney General again suggests that the Legislature give it attention.

The Government after conviction finds that disposition in many cases must still be reached through a maze of legal technicalities after long delay in the Appellate Court. Massachusetts is far better off than most other jurisdictions. A study of appeals through the United States for the year 1924 discloses the fact that 800 cases were considered by courts of review and verdicts set aside because of technical error, without any consideration having been given the guilt or innocence of the defendant. Such action by Appellate Courts, of course, is disturbing to the laity.

I have been discussing the prosecution of cases in the Superior Court from the prosecutor's standpoint, but there are thousands of cases which the District Attorney knows nothing of, begun and disposed of in the police, district, and municipal courts, and it is with these courts the average person most frequently comes in contact. Prosecutions are begun for the most part by police officers, in many instances upon defective complaints due to ignorance on their part of the law. Some of these come through on appeal to the Superior Court, and, of course, must be abandoned. Boston is one of the few large cities of the country in which the people are not represented in prosecutions in the lower courts, and often there, the police officers' unfamiliarity with law and the assembling of facts results in acquittals. Cases are begun in which defendants are bound over for the Grand Jury, and in many instances the Government's evidence is disclosed and a complete defense prepared by the accused before indictmnt. If we are to continue with police as prosecutors in the lower courts, not only ought they to be trained in detection and apprehension of criminals, but in the preparation of proof, and in this district their adequacy and efficiency for either one of the three functions is questionable.

An exhaustive study of the crime problem will undoubtedly result in improvement of all the corrective and remedial agencies. Attention also must be given to crime prevention. Dr. Channing, some years ago, said, "Society has hitherto employed its energy chiefly to punish crime. It is infinitely more important to prevent it."

In the beginning I mentioned the hysteria which pervades the country, and attributed it to the rise in the number of murders and crimes of banditry. Of the nearly 9000 murders committed each year in the United States, 90 per cent are committed with the revolver. The armories of the nation are accessible to imbeciles, morons and the insane, as well as to our children. Within the

week, a boy of 12 was shot and killed by his chum, aged 14, who procured a pistol from a mail order house.

Pistol laws in Massachusetts are of little effect except in depriving our local sporting goods houses of customers. State Prison sentences of 25 to 40 years are not heeded by the type which secures and uses the revolver, yet powerful lobbies maintained by the manufacturers of small arms have blocked action restricting the possession of small arms to the police and military. By far the most effective remedy for crimes of violence is to take away the pistol, thereby decreasing by 70 per cent murders and holdups.

We, of Boston, may point with pride to our low crime rate, both adult and juvenile, which is not due to the efficiency of the police, her prosecutors, or her courts, but may be credited to the public and private preventive agencies maintained for the welfare of boys and youths. The public playgrounds, free public baths and gymnasia, Y. M. C. A., the Boy Scouts, the Boys' Catholic Brigades, the boy clubs and settlement houses, with all of which child-saving agencies Boston is so richly endowed, account for her remarkably low percentage of juvenile delinquency, as well as to her great freedom from the more serious crimes common to so many other American cities. Boston is reaping today the advantages of the foresight of men of vision like the late Robert Woods, James Jackson Storrow and Joseph Lee, who worked so earnestly to promote the development of playgrounds, social settlements and boys' clubs. Through these agencies the private morality of our citizenry has been improved, and, of course, our public morality is benefited, so that these agencies supplementing home, church and school training have given us a community less productive of criminals than others not so well endowed.

Lawyers, besides giving attention to the remedial and corrective methods, can be of tremendous public service by aiding all movements in the community which may be in their nature child saving and crime preventive.

THOMAS C. O'BRIEN, *District Attorney Suffolk District.*

STATISTICS SUBMITTED TO THE JUDICIARY COMMITTEE BY THE CIVIC WELFARE ALLIANCE.

(These statistics were submitted to us and are printed because they are condensed and were submitted to the Judiciary Committee. We have not verified them and assume no responsibility for them. Commissioner Bates submitted a large number of statistics which are referred to in his remarks printed in this number. They are not printed for lack of space. Statistics as to probation and its results are printed in the Report on the results of probation, Senate 431 of 1924, reprinted in the Quarterly for July, 1924. — Ed.)

Arrests for offences *other than drunkenness* in the last *fifteen (15) years* and the number punished with imprisonment each year by *all Massachusetts Courts.*

As arrests increased the commitments decreased except in 1914, 1915 and since 1920.

Year	Arrests	Commitments	Comparison Commitments to arrests— approximately
1910.....	54,011	9,192	1 in 6 arrests
1911.....	54,701	9,571	1 in 6
1912.....	56,836	7,751	1 in 7.3
1913.....	61,688	8,880	1 in 7
1914.....	68,433	10,619	1 in 6.4
1915.....	72,864	11,120	1 in 6.5
1916.....	69,707	7,540	1 in 9¼
1917.....	79,661	7,175	1 in 11
1918.....	80,452	5,380	1 in 15
1919.....	81,180	4,811	1 in 17
1920.....	78,466	2,631	1 in 30

Modern penology, and the idea of reforming law-brakers by sending them back into the community at the rate of 29 out of every 30 arrested, is here shown to have reaped a whirlwind of arrests. The changed attitude of the Courts since 1920 is shown below in the increased number punished by imprisonment.

1921.....	92,481	4,264	1 in 21¾
1922.....	91,934	4,851	1 in 19
1923.....	93,650	4,413	1 in 21
1924.....	111,219	6,497	1 in 17

Compiled for The Joint Judiciary Committee of the Massachusetts Legislature from Reports of the Prison Commissioners and the Department of Correction by The Civic Welfare Alliance, 8 Beacon Street, Boston, March 13, 1926.

GRAND JURY CASES.

MASSACHUSETTS COURTS 1900 TO 1924.

No. placed on PROBATION	Year	G. J. Cases	
	1900	2350	The increase in Grand Jury Cases in the second 12 years was not from growth of population, because population was growing larger in these first 12 years, yet there was no increase of cases,—only fluctuations.
	1901	2474	
	1902	2305	
	1903	2479	
	1904	2393	
	1905	2565	
	1906	2550	
	1907	2649	
	1908	3371	
13,967 in.....	1909	3165	
15,518 in.....	1910	2539	
15,887 in.....	1911	2554	
17,538 in.....	1912	2334	....Same No. as in 1900.
21,074 in.....	1913	2454	
24,714 in.....	1914	2892	Increase of Gd. Jury
27,994 in....	1915	3697	cases began 6 years
28,953 in..	1916	3559	before prohibition.
	1917	3634	
	1918	3962	
	1919	4790	
	1920	4844	
	1921	4869	
	1922	5344	
	1923	4501	
	1924	5749	

Increase 250%

Compiled by The Civic Welfare Alliance from Reports of Dep't of Correction, Prison Commission and Probation Commission, 8 Beacon St., Boston, March 15, 1926.

NUMBER OF PRISONERS ON SEPTEMBER 30th, ALL PRISONS:

Year	Prisoners	
1910	7050	
1911	6892	
1912	6363	
1913	6376	
1914	6877	
1915	6663	
1916	5657	
1917	5239	
1918	3701	
1919	2896	
1920	2352	
1921	3252	From this point the number found guilty have refilled the prisons 100% in 5 years and swollen probation ranks 100%.
1922	3610	
1923	3690	
1924	4523	
1925	4801	
1926 Jan. 1.	5156	

At this point the argument of Probation saving cost of prisons ends .....

Population 2/3 Less 1 Imprisoned to 30 arrests .....

In 1909 Drunkenness accounted for 61.4% of Probation cases.
Other offences accounted for 38.6% of Probation cases.
In 1915 the ratio had reached equality.
In 1919 it had reversed: Drunkenness 30.2%.
Other offences 69.8%.

Compiled from Reports of the Commission on Probation and Department of Correction and Prison Commission for years named, by The Civic Welfare Alliance, Boston, 8 Beacon St., March 16, 1926.

REMARKS OF SHERMAN L. WHIPPLE, ESQ.

The question before the committee seems to have resolved itself principally into a determination as to how to deal with criminals while they are being tried; and after. I am afraid I can be of very little help to the committee on this particular question because I have practised law very little in criminal cases, and I have made no study of penology, or the way to deal with those who are convicted or accused of crime. I have, however, the general feeling of a citizen that something should be done in the present situation.

It has been said that those of criminal instincts ought to be reformed. I am heartily in favor of that, as I think everybody is. The question is, How to reform them? Some say they ought to be reformed by putting them in jail and reforming them there; and others say they ought to be put in restraint temporarily, and then let out to see how they will act; and reform them in that way, by persuasion. Some have called it "coddling."

I must confess that offhand that looks like a bit of a dangerous experiment, though it is an interesting one. If a man has struck down a fellow-man or robbed a bank, if you talk to him seriously about it and then let him loose, it would be gratifying to the curiosity to see how he would act, but it has its difficulties; because the next man he robs or knocks down will feel he has not had a fair show; and so in letting out the man of homicidal instincts, or instincts of theft, to see what he will do, he ought in the interests of the public to be pretty carefully guarded. It seems as though it would be a good experiment to keep some of them indoors for a while until you are very sure that your persuasive preaching has had the right effect.

But I must confess I have very great sympathy for the men of criminal instincts. They are unfortunates. They are very largely the product of their environment. Our Declaration of Independence says that all men are born free and equal, but the man who is born with the instincts of a criminal; who takes in a criminal disposition with his mother's blood, is not born free—he is a slave of the instinct and he needs the State's care,—and the public needs the protection of the State against those instincts,—but I am in no sense an expert as to how best to deal with him.

There has, however, come to my attention, in the Governor's Message, a passage which has impressed me very much . . .

The Governor says:

"Instead of restricting the powers and duties of the judiciary, I would enlarge and extend both so as to make the judiciary more effective and better able to accomplish that duty which is particularly theirs to perform. The day has gone by when the justice of the court should be a mere moderator or referee between lawyers. He should guide and control the inquiry. It is he who 'should conduct the inquiry past all shams, straight to the heart of the question.'"

These are impressive words, and with the general sentiment I am in the heartiest accord. What he says applies not only to the procedure in the criminal courts, but to the procedure in the civil courts as well.

The criticism now voiced with regard to the operation of the courts, is that they are too much absorbed with discussions of technicalities, that the proceedings are too full of ambushes and surprises—discussion about the admissibility of testimony and a lot of things that the ordinary man thinks are of very little consequence; exclusions and admissions of testimony. They degenerate frequently into an attempt by counsel for the side that seems destined to defeat, by raising point after point to trap the judge into granting a new trial;—the judge being obliged to decide offhand without the opportunity to look into the thousands of decided cases in which the law on the matter is entomed. And a new trial means that you have to go through the thing all over again.

I talked with the foreman of a jury—a very intelligent business man—and got the popular view of the matter from him. I asked him what he thought of our procedure. He said: "There is too much time wasted by the lawyers scrapping, and it seemed to us that the judge excluded most of the testimony that we wanted to hear, and let in a lot of stuff that we did not pay any attention to;—but he didn't put anything over on us. We knew what it was he excluded and we decided the case on that."

He spoke the truth (said Mr. Whipple). A great many times, the jury by a sort of instinct will decide the case on what they feel has been unfairly excluded.

The models of what trials may properly be, or the nearest approach to the models that I have seen, are arbitrations among business men. I have attended some of them where important questions were to be determined, and one or three intelligent business men have presided. The first thing that they have said has been, "We will have none of these technicalities; we will go to the meat

of the thing and let anybody say what he wants to say that comes within a proper range, just as we would do in deciding the problems of our own lives; and in that way we will get at the meat of this and do justice." And they have done it. They have disregarded all quibbles as to the probative value of this and the probative value of that, and have got results that usually satisfy the parties much better than what is done in the courts. That is the business man's, and the *big* business man's idea of a court. And more and more they are fleeing the court's jurisdiction and setting up their own tribunals, so as to get rid of the technicalities which we lawyers, by our skill in the use of them, profit by more or less.

Then in the Municipal Courts and the District Courts, in the Criminal sessions, where our brethren do not appear, but the judge puts the direct question to a man, How about this? In a few minutes he will get at the seat of the difficulty, the truth of it, and he will find whether the man is guilty or not. It might be said that gentlemen of our profession lose a job in that way; but it is not a very valuable job if all that they do is to obstruct the finding of the truth, after all, is it?

Those are illustrations of getting at the gist of the thing without the thrills and the annoyances and the interference of technicalities, too many of which have grown up in our archaic system of procedure;—especially rules as to the admissibility of evidence.

Another illustration, and perhaps one that would most strongly appeal to you, is the way that you conduct your own hearings. About the first thing that a legislative committee does is to say, Well, now, we are not going to have all these technicalities put in force as to what we are going to hear. The fewer lawyers you have on the committee the more likely is the committee to abrogate that rule and to say, just as we say in the affairs of life, hearsay evidence has some probative value. We all know that it is not as valuable as first-hand evidence, but we will take it for what it is worth, and analyze it intelligently and carefully. And you get the best results in that way. Suppose that you . . . busied yourselves, with respect to all the remarks that are made before you, with determining what is the exact admissibility of what any particular man who came before you was saying: your job is a long one as it is, but it would be a great deal longer if you did that.

Now the question is as to how the procedure in our courts should be reformed so as to make them function usefully and with the approval of the public—because, no matter how good the

courts are, they must function so as to meet popular approval; for if the people do not have confidence in the method by which justice is reached, we have arrived at a very serious state.

Let me pause a moment here to say that I am not criticising the courts. I have on many occasions been unjustly accused of doing that; but I am not doing it, because it is our pride that our courts have gone farther in quietly bringing about a reform of our procedure than any other courts that I know of; and the legislature, I take pride in saying, has gone beyond the legislatures of any other state that I know of—though, of course, I speak with a limited knowledge—in doing away with these obstructive technicalities.

One of the things that ought to be done is to compel disclosure by the parties and attorneys in advance of trial of what they intend to prove, laying the cards on the table, so that they must depend upon the merits of their case and on the truth for a just verdict, rather than, by springing some trick or strategy or ambuscade on the other side, getting away with the judgment while the other side is confused,—a judgment that they have no right to have. The statute as to discovery which is being enforced by the courts has quietly been doing away with technicalities in trials. We are approaching the standard of the English courts, where they seldom, if ever, set aside a verdict because of the evidence admitted or rejected; and we are following the Federal courts, which, under their equity practice, take practically everything and then sift it out. So that the situation, so far as doing away with technicalities in procedure is concerned, is hopeful; though there is much to be done.

I do not venture to express an opinion as to what ought to be done, because it is a question which ought to be given the most careful and thoughtful consideration. Your committee may think that some tribunal should be appointed to give it consideration and bring in a measure which will accomplish a real reform, not in parts, but to make a symmetrical whole at our court procedure. If you tinker it in this part and tinker it in that part you are liable to interfere with a delicate machine. The subject needs careful consideration. It should be considered by minds other than lawyers'. I do not mean that lawyers should be excluded, but I mean that lawyers are so near to the proposition, they are themselves so involved in these technicalities, and they are so much a part of their nature and of their trade and their learning, the instrumentalities

by which they win their cases, that they do not get the perspective that men like the Governor gets, which we find in these important statements that he has compressed into a few words. Men of education and experience at the bar, and men of business experience, who know how to deal with controversies without technicalities of procedure, should meet together on the committee and discuss and bring about a situation which will do away with those technicalities, so that we shall go straight to the heart of the question in court proceedings, as you gentlemen do here, as arbitral tribunals do, and as they do in the courts where the lawyers are not so ubiquitous as they are in more important trials.

The question of the power of the judges in bringing about this reform is an exceedingly important one. Generally speaking, I entirely agree with the statement of the Governor that the judge should be something more than a referee in a battle of wits: he should be the leader: he should have the right, and be entitled, and have the duty, to lead and help the jury, who need the assistance of an unbiased, unpartisan mind to assist them in their consideration of the evidence and in their deliberations. I think that the ideal situation would be for him to have liberty from time to time to say, "Now, gentlemen, with regard to this evidence, perhaps it is of very little probative value. Under our old law it would not be admitted, and you must take it (if, for instance, it was hearsay) with hesitation, and be sure that it is correct," and in that way be helpful as the case goes along. Sometimes I have thought that it would be well for him to have the last say with regard to the admissibility of evidence, and of the discussion of its probative value. Did you ever think of the inconsistency of our procedure in this respect? You know our habit of referring cases to auditors. You go before an auditor, lay your case before him, put on all the witnesses, and he hears the case on both sides. Then he files his report. He reports his views of the law,—if he wants to, and the court will let him,—and he reports not only the testimony that has come before him, but his decisions. Well, now, his report of the testimony that is given before him is hearsay when it comes to the jury, in a certain sense; but the important thing is that he is permitted to give his opinion as to how the case ought to be decided, and to give all the reasons why the case should be decided in a particular way; we approve of that,—we say that it is approved practice,—that the auditor shall give his opinion to the jury, and let the jury deal with it. And still a judge sitting on the bench, paid

by the Commonwealth, and supposed to be absolutely dispassionate, high-minded,—as they all are,—filled with a sense of duty, is not permitted to say to the jury what the significance of the evidence is, or to comment upon the evidence at all! An auditor—nobody knows who, or how he happens to be selected—can give his opinion on the whole case, and still a judge, the servant of the Commonwealth, the minister of justice,—if he says a word as to what he thinks about the case when it comes before him, has done what is ground for setting aside the verdict! The law says that he can not do that. I point that out as showing how inconsistent our position is with regard to what a judge shall say to a jury. And how *can* the judge be a leader of the jury and guide them properly unless he can make some comment upon the probative force or weight of evidence?

It is said that there is danger that some judges having that power would abuse it, that they would be partisan and unfair; and I suppose that there is a remote danger of that in the case of some men who happen to be judges but are not of judicial temperament—that this power might be abused. But judges have always had the power in the Federal courts; I have practised there a great many years, and I can say with pleasure that I have never known a judge in a Federal court to abuse that power. High-minded and responsible men, such as judges are and ought to be, are not likely to abuse a judicial prerogative of that sort. And the situation to-day with regard to the setting aside of verdicts results, in my judgment, from the fact that the judges are not permitted during the trial to lead the jury intelligently, or to give them an intelligent idea with regard to the issues in the case, lest the court may be said to have charged on the facts. And so they sit by in the most casual way, perhaps, until the jury have deliberated, and then they will say, "I will set the verdict aside";—and all that time and effort and expense have been wasted.

Therefore, if they are to be given a larger power with regard to the point that I have been mentioning, it should be accompanied, perhaps, with an understanding of some sort that when a jury had once made a decision, enlightened and helped by the leadership of the judge, it should be let alone, and the verdict should not be set aside; and thus we should not have the spectacle of our Commonwealth spending money for three or four trials of the same issue, which ought to be settled, if the jury are intelligently instructed, perhaps, in one trial.

A commission, or a committee, taking into consideration the inconsistencies which now exist, and the very great, very substantial progress that has already been made, it seems to me could make a very intelligent and helpful report upon this passage in the Governor's Message to which I have referred.

The Governor says:

"I should like to see our courts adopt the English system of trial of causes."

Of that I am not so sure. I do not know so much about the English system; I have not made a study of it. I do know that they dispatch business, and dispatch it promptly, and dispatch it effectively. As to whether their method would be properly adjusted to our own civilization, and whether we could adopt their procedure, I am not so certain. I myself think that there are now in our system of procedure merits and advantages that the English system does not have, and I think that those merits can be developed along the lines of our own thought.

"THE CRIME WAVE"—A PLEA FOR SANITY.

Issued by the Committee on Prison Problems of the Massachusetts Civic League.

MRS. JULIUS ANDREWS
JEFFREY R. BRACKETT
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JOSEPH G. THORP
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(February, 1926.)

FIRST OF ALL, THE FACTS.

Is crime on the increase?

Conclusions should not be reached without careful study of the whole situation. What do the figures for the last ten years show? How many of the offenses of recent years are for violations of motor laws and prohibition laws which did not exist ten years ago? Is an increase in crime an aftermath of war? How do figures compare with increase in population?

These and like facts need to be carefully weighed.

Attorney-General Jay R. Benton, chief law officer of the Commonwealth, in his annual report says:

"It is of the utmost importance that hysteria should not be the basis of, nor allowed to control, new legislation. The time demands clear thinking, unencumbered by passion, an actual knowledge of the facts and a proper appreciation of all the facts which enter into the whole situation."

Dean Roscoe Pound, of the Harvard Law School, in a recent interview said:

"There is very little exact information available. . . . Very little of what is said or written on the subject has any sure foundation in exact knowledge of the facts."

Superintendent Michael H. Crowley of the Boston Police Department recently stated:

"Boston has not been the resort of professional criminals from other states; our offenders are overwhelmingly our own boys. There is no other city of similar size where it is as safe for women to walk the streets at night unescorted as in Boston."

Recent Attacks.

Attacks on the *integrity of the courts* have been made; *abuses* of *parole, probation* and the *suspended sentence* have been charged; *epithets* have been hurled at "experts" and "reformers." *Bills have been filed in the legislature* which, if enacted, would destroy or seriously limit, some of the best features of our present system.

The Courts.

It is proposed to reduce the discretionary powers of the courts. But discretion must obviously be exercised by some one in the criminal process. If the judges are deprived of it by the prescription of definite penalties, then policemen will exercise it in deciding whether to arrest, jurors in reaching verdicts, prosecutors in determining their action. If discretion is reduced in the courts, it is bound to increase somewhere else. Is not discretion better lodged in the courts where it is exercised openly and by the most competent of officials than in places where it escapes both observation and responsibility?

Probation.

What Is It?

About one-quarter of the persons found guilty of offenses in Massachusetts courts are given the chance by the courts to prove, under supervision, that they can and will so conduct themselves as not to need punishment. This process was given the name of probation in 1878 and extended to the whole state in 1891. It does not preclude a sentence, which may be imposed at any time the judge sees fit. The courts seldom grant probation to serious offenders.

The vital feature of the Massachusetts law is that it is simply a power given to the courts, to be exercised in the judge's discretion. It is this feature that has just been given a national endorsement by its adoption for the federal courts, by the overwhelming vote of Congress using precisely the language of the Massachusetts Law.

Has it worked?

Last year

32,000 persons were placed on probation.
82% conducted themselves so well as to be discharged.
Only one in ten had to be surrendered to the court.

What is proposed?

In an official investigation covering a period of eight years

76% of those who completed their probation and were discharged had no subsequent court record.

Legislation to limit probation to first offenders has been introduced. The fundamental principle in administering probation is that each case shall be individually considered with all the factors in mind, not just the number of appearances in court. Moreover, this limitation would practically *destroy the non-support laws of the state.* Non-supporters placed on probation are forced to work under orders of the court and make weekly payments for their families.

Last year probation officers collected one and a quarter million dollars for such families.

If no man who had ever been convicted for drunkenness, for instance, could be required by this process to support his family, hundreds of "non-supporting" fathers and husbands would be thrown into jail where they would themselves be maintained at public expense, while their families would by the same stroke be deprived of their enforced support.

Suspended Sentence.

Suspension of the execution of a sentence has proved one of the most effective devices in the correctional process. Under it the offender has a fixed penalty hanging over him. If he offends again, the original sentence takes effect. Control extends over a much longer period than if he had been committed to an institution. Experience shows that restraint is greater by what is implied than by what is actually inflicted.

By suspension of fines, hundreds of men are made to pay the fine instead of being sent to jail at the public expense.

Probation officers during 1924 collected $358,025 by this process. If the penalty had not been suspended, instead of regaining this sum, *the public would have had to provide 2127 years imprisonment!* Sending to jail the persons placed on probation and those whose cases were filed, *would have added to the prison population 75,666, or over 600%!*

Parole.

Probably no phase of the penal system is more misunderstood than parole. Twenty-five years ago, if a judge wanted a man to serve four years in state prison, he gave him that sentence. Today he gives him a minimum of six and a maximum of nine years. The man must then serve at least four years before he can be paroled, and must, in addition, submit to control for the balance of the nine years. Under parole from state institutions, no man is released until he has a job and a home.

94% of those released on parole have made good up to the present time.

(Annual report, 1924)

Bills are pending to limit parole to first offenders; to give the Governor and Council power to suspend the parole law at any time; and to abolish county parole.

To make the number of offenses the basis for parole gives undue wieght to a single fact. Other circumstances relating to the prisoner should also be considered. Parole should not be denied absolutely to second offenders. The seriousness of the crime, the circumstances, the character of the offender, should all be taken into account. On the other hand, all first offenders should by no means receive parole. The first offense to come before the court may be the culmination of long continued wrong-doing which was not detected. Thus the law calls for wisdom in its execution.

In regard to the second proposal, *if the parole board or any other board, does not do its duty properly, the remedy is not in suspending the law but in suspending the officials.*

The League has long urged a better system of county parole.

Experts.

There is a science of criminology, though it has lagged behind other sciences. Whatever progress has been made, however, is due to those who have made use of the scientific method.

Says Dr. William Healy of Boston, whose work is known throughout the United States and abroad and whose methods at the Judge Baker Foundation have greatly reduced juvenile delinquency in Boston:

"Those who have to do with the judging and treating of offenders must reckon with such methods and facts as we present, if they would rank as intelligent workmen."

Governor Fuller in his annual message lays stress on the fundamental contention of the experts in penology:

"The proper disposition of all criminal cases depends on a full and complete knowledge of this history of the criminal. Such information is now available, and I recommend a more general use by our courts of the information in the hands of our probation commission, whose duty it is to serve them."

What is the Aim of Penology?

The supreme aim in the treatment of criminals is the protection of society. All other objects—punishment, reformation, regard for the prisoner or his family—are secondary.

How is Society Best Protected?

1. By Prevention.

Does severe punishment prevent crime?

History gives little comfort to those who hold that it does. Macaulay and Lecky describe London in the 17th and 18th centuries as utterly unsafe by night, while the countryside was unsafe by night or day. Yet the laws were ferocious. Men were hanged at Tyburn every Monday by the dozen. Pickpockets did a thriving business during the public execution of a fellow pickpocket. Stealing a loaf of bread was a capital offense, yet bread continued to be stolen.

The better way is to remove the cause.

Changing the social conditions which tempted a man to steal a loaf of bread is a better protection to the bread dealer than hanging the thief. *More just economic conditions; better home training; fewer broken homes; more playgrounds and recreation centers; longer schooling; early discovery, and in many cases, permanent segregation of mental defectives; extension of agencies like the Judge Baker Foundation,—such are the ways of progress in preventing crime.*

2. By Reformation.

So long as society continues to produce criminals, they have to be dealt with somehow. There are only three ways: the *extermination* of all criminals, which can hardly be seriously considered; the *permanent segregation* of all criminals in institutions, to which the tax-payer would never consent; the *reformation* of as many as possible, so that they can be safely returned to the community, which is, of course, the only practicable way.

Massachusetts has chosen the way of prevention and reformation. Shall she go forward in that way, or go back to discredited methods of the past?

The Way Ahead.

Probation should be improved and extended. There should be more and better paid probation officers; there should be more sympathetic understanding of probation on the part of the courts and of the community; there should be freedom from interference by politicians; in particular, should there be no political control of salaries.

Parole should be retained and similarly improved.

More adequate training and *education* should be given in the penal institutions.

A small wage should be paid to the prisoner as an incentive to form habits of thrift and industry; to encourage self-reliance by giving him responsibility for helping his dependents; to insure that he shall not be turned out at the end of his term without any means of support.

Proper institutions should be provided,—a new state prison; new institutions or existing ones remodeled to provide for a greater degree of classification and specialized treatment. Those found by psychiatrists unsafe to live in the community should be permanently segregated.

In addition to these urgent measures, we should look forward to an indeterminate sentence, not with a maximum and a minimum. The prisoner should be confined until he is in a condition to be let out with safety to the community, be the time long or short or never.

Administrative Improvement.

Procedure in criminal cases should be revised to meet the conditions of today. It is commonly acknowledged that American legal procedure is antiquated, cumbersome and expensive. Technicalities and appeals consume the time of the courts, permit the long postponement or utter evasion of penalties, especially by the well-to-do, and undermine public confidence in the administration of justice.

Laymen cannot presume to prescribe remedies for these evils, but nothing is more fundamental for the combatting of crime than the scientific revision of our whole system of jurisprudence, so that *justice shall be swift and sure.*

The intelligence and humanity of a community can be measured by the way that community treats its most helpless members. This leaflet concludes, as it began, with *a plea for sane thinking*, for a *knowledge of all the facts* before any legislation is enacted. The Judicial Council has just issued its first report, an extremely valuable one. The Attorney-General is investigating four hundred cases submitted to him. The Governor is giving much thought to the situation. The public is aroused. Massachusetts has often led the way in the handling of correctional problems,—in probation; in the examination before trial by impartial experts of certain persons accused of felony; in the psychiatric examination of prisoners; in the conduct of her reformatory for women; in the prevention of juvenile delinquency. Many of her leaders in the correctional field have achieved both a national and an international reputation.

May she continue to hold this position of eminence!

AN EDITORIAL FROM THE BOSTON HERALD AND A LETTER FROM HON. JOSEPH A. CONRY

Benton and Goodwin

From Boston Herald, March 1, 1926.

We are not sure that Mr. Goodwin was in error when he said that Attorney-General Benton's recent report starts off as a whitewash and ends as a lampblack. Mr. Benton found no evidence of corruption, but he discovered many indications of errors of judgment, gross inefficiency in various aspects of bail, lack of co-operation, lax enforcement and failure to carry out the intent of the laws. Anybody reading the first part of the report would say that Registrar Goodwin and Commissioner Wilson had failed to make out a case. Anybody reading Mr. Benton's findings in full would conclude that both have received ample vindication. It is good to know that there has apparently been no corruption. It is good to know that, corruption or no corruption, there has been amazing nonfeasance.

We regret that it has been found inexpedient to open up the original reports to the press, and that we must depend solely on Mr. Benton's summing up of the situation. We think that the public is quite competent to form its own conclusions after reading the individual reports. We assume that they will be made public very soon, as Mr. Benton states that they are available for members of the Legislature if the judiciary committee seeks additional data. This committee begins its hearings tomorrow. Can it afford to allow the findings of the investigators to remain concealed from public scrutiny while the community is trying to determine what is wrong and who is responsible? Mr. Goodwin named names. Mr. Benton's report is entirely impersonal. Are the specific reports of Mr. Benton's investigations impersonal?

And we praise Mr. Goodwin in spite of some very ridiculous things that he said at the Old South Forum yesterday afternoon, the absurdity perhaps reaching its culmination in his characterizing certain eminent law professors as seeking to have things remain as they were, when in reality these men have been most eager and zealous and intelligent workers for better conditions. In other words, Mr. Goodwin's zeal often outruns his discretion.

Benton Versus Goodwin.

Boston Herald, March 3, 1926.

To the Editor of The Herald:

Your editorial this morning, "Benton and Goodwin," intends to make a fair summary of the situation created by these two gentlemen.

There can be no just criticism of the attorney-general's report founded upon the alleged use of either whitewash or lampblack.

The critic or crusader can revel in his choice of words. He may enlarge, even exaggerate, conditions for the purpose of emphasizing a point, particularly when he is trying to engage the attention of the general public. He may associate unrelated facts and suggest conclusions. He may indulge in the wildest freedom of expression and he is not to be called to account for his open-handed opulence of words. He has accomplished his purpose when he secures a place on the "front page" or when he gets "people talking."

The attorney-general is denied this exuberance of phrase and extravagance of language. He can be no spendthrift of fiction. The scholarly Mr. Benton, able and not too austere, knows that the reports of the attorney-general are to be filed in all the law libraries of the state. The student or historian turns from the reports of the supreme court to their companions, the reports of the attorney-general. Mr. Benton takes excellent care to see that there is no shock and that the judicial character of the supreme court is preserved in the papers of the attorney-general.

The critic works for the day. When he has aroused the community his work is done. The attorney-general must maintain the precedents. His work is permanent.

In his report to the Legislature Mr. Benton appears to have prepared a concise, dignified document worthy of judicial mind. It is based on principles, not discursive, or given over to argument, but the findings from the evidence are set forth in proper legal form.

The Herald regrets that Mr. Benton did not give to the press reports in detail of the great variety of cases which were before him. For his report that was uncalled for. He made findings on principle, of "errors of judgment," "gross inefficiency in bail matters," "lax enforcement of law in regard to defaulters and their bondsmen." Small comfort to the delinquent district attorney that there was no evidence of actual corruption, but plenty evidence of "errors of judgment." What more blistering decision could be desired?

Every candidate for district attorney wishes to have the public regard him as a man of "sound judgment." Hardly less important than that he be a man of "rugged honesty." If it turns out that the district attorney has no judgment, is immature, rash and unsteady in his handling of criminal matters, it may be that he is more dangerous than if he were actually dishonest.

If the details upon which these findings were made need to be given to the public, Mr. Benton says there is a body that has all the authority necessary and is not at all narrowed by tradition. The judiciary committee has the whole story. It can make up a ledger account showing all the various lapses and it can make such recommendations as it may desire. Will it do so?

There is a general feeling that such a complete report should be given to the public.

The control of crime and the handling of criminals is a business requiring energy and judgment on the part of the district attorney and the active co-operation of the police department as well as all other branches of the government.

Next to the criminal as an enemy of society is the "straw bail man" and the professional bondsman. How have they fared in recent years? Let a legislative document show the whole story.

JOSEPH A. CONRY.

1 Beacon Street, March 1.

Note.

At the hearing before the Judiciary Committee the Attorney-General stated that the reports of the 80 members of the bar whose names are listed in his special report (H. 1186) cover 1400 typewritten pages; that he would turn over these reports to the Judiciary Committee for such use as they saw fit to make of them as soon as he had completed his investigation of certain cases.

The reports have not been made public. What is in them we do not know, but, as suggested in the editorial comment at the end of this number, we think the sound hard work of our better judges throughout Massachusetts has been already too much overshadowed by overemphasis, and newspaper advertizements, of occasional mistakes. The general rule of judicial silence is a sound one. It is time that we recognized this and the Attorney-General and the Judiciary Committee seem to have shown sound judgment in not adding to the general disturbance by handing the newspapers 1400 pages of reports to feed more newspaper headlines. The Attorney-General has given us in his report the lessons to be drawn from these reports. The Judiciary Committee and the legislature proceeded deliberately. The public may well restrain its curiosity about details and trust the judgment of its responsible officers and representatives in this matter as far as the further airing of these cases is concerned. So far as the bail situation is concerned an attempt has been made to meet it by Chapter 340 hereinafter printed. The whole subject of bail is under consideration by the Judicial Council. Suggestions may be sent to the Secretary.

F. W. G.

COMMUNICATION TO THE JOINT JUDICIARY COMMITTEE OF THE LEGISLATURE BY VOTE OF THE COUNCIL OF THE BOSTON BAR ASSOCIATION.

On February 13, 1926, the Council voted that the following communication be submitted to the Joint Judiciary Committee:—

The Council of the Bar Association of the City of Boston understands that many bills have been introduced, by various individuals, to remedy the prevalent crime situation, and that such bills will be considered by your Committee during the first week of March next. All of these bills have doubtless been introduced out of earnest solicitude for the public welfare. Necessarily, however, they are of varying merit, and your Committee will be called on to make a choice between them. We venture to offer two suggestions as to the way in which, it seems to us, it will be for the public welfare for your Committee to approach this perplexing subject.

First, we suggest that in all bills involving criminal procedure, the opinion and advice of the Judicial Council be requested. The Judicial Council was created by the Legislature, on the recommendation of your Committee, in order that the study of the judicial system might be continuous, and that we should avoid the patchwork results in that system which had occurred in past years through various individual bills introduced to meet specific troubles. We feel that this is particularly the time to make use of this instrument you have created.

Second, while criminal procedure is an important element in the prevention of crime, it is by no means the only element. Other elements must be considered, such as the causes of crime, which are largely sociological, and so beyond the remedy of statutes; the detection of crime, which is lodged with the police authorities; the prosecution of crime, which is the duty of district attorneys; and the punishment of crime, or the disposition of the offender, which includes the system of parole, probation, and commutation of sentences, and under the recent statute the mental examination of the criminal. In order to arrive at any satisfactory progress in the elimination of crime, all of these elements must be considered. The first thing in the consideration of them is to find out the facts, and then to devise the remedies.

Thus far, there has been in our Commonwealth no satisfactory investigation of the facts. It is quite easy to find cases here and there in which the treatment of the criminal seems far from satisfactory. But how far such cases are typical of the whole, no one knows; neither can it be determined in any offhand way, which element was to blame. There ought to be thorough investigation

of the facts, in the first instance, by some body of intelligent investigators who are not committed to any particular theory of the suppression of crime, but could look calmly and sanely over the whole subject. When the facts were thus found, they would be accepted as authoritative statement by the public, which hitherto has not known what to believe with regard to our courts. After the facts were known—as well as they could be known—such a commission could decide upon the remedies. It might find that some co-ordinating agency ought to be created, which would co-ordinate the various elements to which we have alluded. Of course such a commission would work in conjunction with the Judicial Council, so far as remedies related to criminal procedure, but would naturally investigate and take into account various elements for which the Judicial Council was not constituted, and which is not within its province to consider. The Attorney-General, in his report, has suggested such a commission, and we desire to support his recommendation.

We believe that if these two suggestions are followed, namely, that bills relating to criminal procedure be submitted to the Judicial Council, and that the various other elements making up the present crime situation, be considered by a proper commission with power to report upon the facts, and recommend the remedies, we shall make some progress. We can make progress only by this continuous study, and by continuous experimentation with various remedies. Crime has always existed in every community and always will exist; it cannot be combatted by sudden spasmodic efforts. The facts relating to it must be studied, and the remedies tried, in some continuous fashion. The vigilance which will meet it must be eternal.

LETTER OF THE COMMITTEE ON THE AMENDMENT OF THE LAW OF THE BOSTON BAR ASSOCIATION TO THE JUDICIARY COMMITTEE DATED MARCH 5, 1926.

The Committee on Amendment of the Law of the Boston Bar Association has for the past two days been represented at the hearings of the various bills dealing with the punishment of crime.

We have concluded that your Committee would be as well satisfied to get our views in writing. I am accordingly sending to you a brief summary of our Committee's conclusions in regard to the proposed legislation.

In considering the bills, we found many dealing with the penalties to be imposed, which we thought were not in our province. We wish, however, to express our opinion concerning the bills intended to take from the Courts and from district attorneys and the Parole Board some of the powers that they now exercise in dealing with persons before them.

The bills appear to be drawn upon the theory that these officials cannot be relied upon to exercise the discretion which they now have with sufficient severity to protect the community, and that the proper cure for their discretionary leniency in certain cases is to deprive them of their discretionary power in all cases. This, of course, substitutes for the present system an automatic system of predetermined and uniform severity.

Our Committee is not convinced that the discretionary power of these officials has been abused or mistakenly applied in more than a small percentage of cases. In the vast majority of cases, the present system appears to work beneficially.

Assuming, however, that these officials have, in some instances, been too lenient, the remedy does not appear to us to lie in a uniform severity. Convictions, frequently by a jury, must precede the penalty, and experience shows that where severe penalties are certain, juries frequently will not convict. On the other hand, it is the opinion of our Committee that any undue leniency from whatever cause will tend to be corrected by a sturdy expression of public opinion in support of a vigorous and impartial administration of the law.

For the reasons above stated our Committee oppose the following bills:

H242—Limiting the powers of district courts to place complaints on file.

H245—Limiting the right of the district attorney to nol pros indictments charging felony.

H246—Limiting the power of courts to place on probation. (The power to place on probation has apparently been very effective in collecting money from defendants in non-support cases.)

H247—Limiting the power of district courts to suspend sentence.

H303—Limiting the power to release prisoners on parole.

H304—Limiting stays of execution after sentence.

H305—Requiring publication of all prior criminal prosecutions after conviction and before sentence.

H368—Relative to bail in criminal cases.

H369—Relative to judgment on default.

H445—Making admissible evidence of prior convictions. (This would practically inaugurate the French system with the danger of convicting an innocent man on an earlier bad record, rather than upon the facts of the particular case.)

H753—Relative to criminal procedure. (This bill is based throughout on principles to which our Committee is opposed.)

H759—Repealing the law permitting indeterminate sentences.

H943—Excluding serious offenders from probation. (This is an unnecessary restraint on the power of judges.)

The legislation proposed by the following bills, our Committee consider unnecessary.

H761—Providing for bail without sureties in misdemeanor cases.

H937—Relative to appeals in certain juvenile cases.

H946—Providing that real estate attachments in contempt cases shall act as waiver of the contempt.

We favor the following bills:

H760, Section 1—we favor if such legislation is necessary.
Section 2—we disapprove.
Section 3—we approve.

H939—As to this bill, our Committee feels that twenty-two peremptory challenges are too many; that six are not enough. The proper remedy would seem to be an improvement in the method of selecting the jurors placed on the jury list.

In order to clear up any misapprehensions which might otherwise exist, we wish to add that our Committee has not considered or acted upon any proposal for an enlarged state police force, nor has it acted upon nor does it express an opinion upon any proposal to reorganize the Courts. The proposal to permit judges to charge on facts, has been discussed by the Committee and is approved by a majority. No action, however, has been taken, as there appears to be no bill before the Legislature covering this matter.

STATEMENT GIVEN OUT MARCH 19th, 1926, BY THE JUDICIARY COMMITTEE IN CONNECTION WITH 18 BILLS IN REGARD TO CRIMINAL MATTERS RECOMMENDED BY THE COMMITTEE.

The Joint Committee on the Judiciary has given most careful consideration to the many reports, recommendations, bills and suggestions relative to the administration of the criminal law in this Commonwealth which have been referred or presented to it. The Committee is reporting 18 measures which it believes will strengthen the laws, correct such abuses and inequalities as have been found to exist, and bring the statutes into greater conformity with modern conditions.

The Committee believes that the situation relative to crime in our community is such as to demand serious consideration and that the public conscience has been aroused anew to a realization of the fact that there is and always has been a frightful waste of human resources because of the prevalence of crime and that new and constant efforts should be made to suppress it. The Committee is unanimous in sympathy with this renewed public sentiment, and has put forth every effort to support it.

A large part of what may indicate to the public mind an increase in crime is due to undetected crime or more specifically, unapprehended and hence unpunished criminals. In connection with this phase of the problem there are and naturally can be few statistics of value, and it is obviously a matter relating almost exclusively to police and detective departments, and very slightly if at all to legislation or administration of criminal laws in our courts. The Committee recommends that a careful study be made by some appropriate department of the State government relative to a reorganization, consolidation or coordination of the various police departments of the State or of the Metropolitan District, with a view of securing greater efficiency in the suppression of crime in line with suggestions made by speakers at the hearings, and particularly by the attorney-general.

So far as the administration of the criminal laws in our courts is concerned there is undoubtedly room for improvement, as there is in every governmental agency which must perforce be administered by human beings. As was well said by one of those who addressed the Committee, there can be no greater fallacy than a common misinterpretation of the theory that "this is a government of laws and

not of men;" for laws are not self-administering, but are of value and effect only as and when administered by men.

Of the 400 specific cases referred to the attorney-general in criticism of the administration of criminal justice, only 86 were deemed by him of sufficient importance to warrant investigation. They covered a period of fifteen years, and during that period more than 3,000,000 criminal cases were disposed of in this Commonwealth.

The Committee is not disposed to interfere materially at this time with the delicate machinery of the probation and parole systems. Whatever abuses and inequalities have been discovered in the administration of these modern instrumentalities of penology, the Committee is satisfied have occurred largely in some of the lower or district courts and have been due to a variety of causes chief of which perhaps have been lack of sufficient machinery and lack of co-ordination between the various departments concerned with the administration of the criminal statutes, *i.e.*, the parole and probation boards, the police and the courts; and the Committee recommends the concentration of certain discretionary powers in the Justices of our Superior Court.

The administration of human affairs, civil or criminal, cannot be conducted by machinery or by rule of thumb; discretion must be lodged somewhere; so far as criminal prosecution is concerned if discretion is not lodged in our courts it will be exercised by some other human agency: by our juries, our prosecuting authorities, our police, complainants or perhaps, in the last resort, by public opinion.

Specifically the Committee recommends that in disposing of all cases by sentence or otherwise and in admitting defendants to bail the complete record of the defendant shall be before the Court; that in the lower courts probation, filing and the suspending of sentences for felonies be eliminated where the defendant has been previously convicted of a felony; that the law relating to the unlawful appropriation of vehicles be amended by eliminating its application to motor vehicles and that the judisdiction over the larceny of automobiles be confined to the Superior Court and that the sentence therefor be left to the discretion of the Court, with the maximum increased from five to ten years; that increased penalties be provided for the larceny of automobile parts; that the commission of offences involving the use of an automobile, including the larceny of poultry and farm products be particularized with substantial maximum penalties attached.

Probably nothing has brought greater discredit upon the administration of our criminal law than the occasional and notorious delays in the final satisfaction of justice. It may be that the solution of the question as to how to secure swift and certain punishment of the convicted offender is the entire separation of the criminal and civil jurisdiction of the courts and possibly an organization of the criminal branch into county or State circuits. This is a matter which the Committee believes should receive the consideration of the Judicial Council.

The Committee recommends, however, certain amendments at this time which it believes will expedite the final determination of criminal prosecutions. It recommends that the statute of 1925 providing for the certification to the Supreme Judicial Court of the record and evidence in homicide cases be extended so as to include all felonies; and that district attorneys be required to move for sentence within seven days of a verdict where there are no exceptions or appeal. It recommends also that the present archaic statute relative to precedence of the trial of certain classes of cases pending at any criminal session be superseded by a statute permiting the district attorney to advance any case for speedy trial. It recommends that the number of peremptory challenges permitted a defendant in certain cases be reduced from 22 to 12.

It recommends that in the Superior Court, under strictly defined methods of procedure framed to protect a defendant's constitutional rights, a defendant in open court, having been duly appraised of his privileges may be permitted to waive trial by jury.

As a further corrective of some of the odium which appears to have fallen upon the administration of justice in the criminal courts, the Committee recommends that no person, other than a member of the bar, shall be permitted to appear for hire in behalf of any defendant in the office of a district attorney, or in any criminal court, and that violation of this statute shall be made a misdemeanor punishable by fine or imprisonment.

In the matter of bail the Committee believes that most of the criticism and dissatisfaction has been due to the conduct of professional bondsmen. To correct the evils surrounding professional bail, the Committee recommends that all bondsmen for hire or reward be required to qualify with a sworn statement of assets and liabilities at least twice a year before the proper authorities; that they be permitted to give bail in all cases only to an amount of ..... times their free assets as disclosed under oath; that in case

of default, execution against the sureties be issued forthwith for the full amount of the bond and until satisfied in full the bondsmen shall not again be permitted to qualify as surety in any court. Adjustments of judgments against friendly or family bail the Committee would leave to the discretion of the courts and district attorneys who have knowledge of all the circumstances.

The Committee believes that no advantage could be derived from the appointment at this time of any special commission to make further study of the situation. The Commonwealth already has a commission fully authorized and well qualified in personnel to deal with this weighty problem and the Committee therefore recommends that further and continuing consideration of the many phases of the problem untouched in this report be left to the Judicial Council.

Specifically the legislation recommended by the Committee unanimously, is as follows:

AN ACT Authorizing Amendments of Indictments and Complaints in Certain Cases.

AN ACT to Expedite Sentences Following Conviction in Certain Criminal Cases.

AN ACT Providing that Specific Criminal Cases May be Given Precedence Over Other Cases on the Trial List.

AN ACT Relative to the Punishment for Non-Appearance of a Person Duly Summoned as a Witness in a Criminal Case.

AN ACT Relative to the Punishment of Certain Motor Vehicle Crimes.

AN ACT Relative to Motor Vehicles Used in the Commission of Crime.

AN ACT Relative to the Number of Peremtory Challenges of Jurors Available to Defendants in Trials for Murder and Certain Other Offences.

AN ACT Relative to Judgments for Forfeited Bail Against Professional Bondsmen.

AN ACT Further Regulating Professional Bondsmen.

AN ACT to Provide for Waiver of the Right to a Trial by Jury in Criminal Cases Other than Capital Cases.

RESOLVE Providing for an Investigation Relative to Unifying the Police Departments of Metropolitan Boston.

AN ACT Relative to Probation, Suspended Sentences and Filing of Complaints in District Courts.

AN ACT Relative to Criminal Records of Offences Against the Law of the Commonwealth.

AN ACT Relative to the Participation of Non-Members of the Bar in the Trial, Management or Disposition of Criminal Cases.

AN ACT Relative to the Arrest of Persons While on Probation.

AN ACT Prohibiting the Service of Convicted Persons on Juries.

AN ACT Relative to Theft or Concealment of Motor Vehicles and to Concealment of Motor Vehicle Thieves.

AN ACT Relative to Certain Appeals in Felony Cases Other Than Murder and Manslaughter, and to the Elimination of Delay Therein.

AN ACT Providing That Motor Vehicles Shall Not Be Included in the General Law Relative to Punishment for Unlawful Taking of Boats, Vehicles and Animals.

The statement is signed by Senator Walter Shuebruk of Cohasset (Senate chairman), Representative Martin Hays of Boston (House chairman), Senators James G. Moran of Mansfield, Charles C. Warren of Arlington, Hugh A. Cregg of Methuen, William I. Hennessey of Boston, Representatives George F. James of Norwood, Thomas H. Bilodeau of Boston, Louis L. Green of Cambridge, Albert A. Sutherland of Boston, Thomas R. Bateman of Winchester, Harold E. Howard of Westfield, Angler L. Goodwin of Melrose, Michael F. Shaw of Revere, Francis E. Cassidy of Webster and Williaw A. Fish of Boston.

Note.

House Doc. 1292 providing for waiver of the right to a trial by jury in criminal cases other than capital cases was reported by the Judiciary Committee and then referred to the next Legislature as the question of the right to do this under existing statutes was pending before the Supreme Judicial Court.

NEW STATUTES OF 1926 PASSED AS A RESULT OF THE "CRIME WEEK" HEARINGS.

Chapter 192—Peremptory Challenges.

Reduces the number of peremptory challenges of jurors in trials for crimes punishable by death or imprisonment for life from twenty-two to twelve (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 193—Jury Service.

Extends exclusion from jury service by order of court by striking out the words "is convicted of a scandalous crime" and making it cover a person who "has been convicted of any felony, or of any other offence punishable by imprisonment in a jail or house of correction for more than one year" (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 203—Unlawful Taking.

Amends G. L. Ch. 226, Sec. 63 by providing that motor vehicles shall not be included in the law relative to punishment for the unlawful taking of boats, vehicles and animals (takes effect Sept. 1, 1926. See Ch. 296.).

Unauthorized use of motor vehicles is covered by another act.

Chapter 253.

Making knowledge a necessary element in the offence of using a motor vehicle without authority.

Chapter 227—Amendatory Indictments.

Authorizes amendments of indictments and complaints in certain cases. "Chapter two hundred and seventy-seven of the General Laws is hereby amended by inserting after section thirty-five the following new section:—*Section 35 A.* Upon motion of the district attorney or prosecuting officer, the court may order the complaint or indictment amended in relation to allegations, or particulars as to which the defendant would not be prejudiced in his defence."

Chapter 228—Advancing Cases for Trial.

Amends G. L. Ch. 212, Sec. 24 by adding a proviso "that the court on motion of the district attorney may order that the trial of any specified case of crime shall take precedence over all other cases" (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 230—Non-Appearance of Witnesses.

Relates to the punishment for non-appearance of a person duly summoned as a witness in a criminal case. "Chapter two hundred and thirty-three of the General Laws is hereby amended by striking out section five and inserting in place thereof the following:—*Section 5.* Such failure to attend as a witness before a court, justice of the peace, master in chancery, master or auditor appointed by a court, or the county commissioners, shall also be a contempt of the court, and may be punished, in case of such failure to attend

as a witness in a criminal prosecution, by a fine of not more than two hundred dollars or by imprisonment for not more than one month or both, or, in case of any other such failure to attend as aforesaid, by a fine of not more than twenty dollars" (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 245—Expediting Sentence.

Expedites sentence in certain criminal cases. "Chapter two hundred and seventy-nine of the General Laws is hereby amended by inserting after section three the following new section:—*Section 3 A.* Not later than seven days after a plea of guilty or after a verdict of guilty and in any event before adjournment of the sitting at which such plea or verdict has been taken and recorded in a case of felony not punishable by death wherein no question of law has been reported for decision by the Supreme Judicial Court, the district attorney shall move for sentence" (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 261—Silencers of Firearms.

Prohibits the sale and use of silencers for firearms. "Chapter two hundred and sixty-nine of the General Laws is hereby amended by inserting after section ten the following new section:—*Section 10 A.* Whoever sells or keeps for sale, or offers, or gives or disposes of, or uses, any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm shall be punished by imprisonment for not more than five years in the state prison or for not more than two and one-half years in a jail or house of correction."

Chapter 266—Arrest of Persons on Probation.

Relates to the arrest of persons while on probation. "Section three of chapter two hundred and seventy-nine of the General Laws is hereby amended by inserting after the word 'may' in the third line the words:— and shall if he has been convicted of any offence, other than drunkenness by the voluntary use of intoxicating liquor, since being placed on probation in such case,—so as to read as follows:—*Section 3.* At any time before final disposition of the case of a person placed on probation in the custody of a probation officer, the probation officer may, and shall if he has been convicted of any offence, other than drunkenness by the voluntary use of intoxicating liquor, since being placed on probation in such case, arrest him without a warrant and take him before the court, or the court may issue a warrant for his arrest. When taken before the court, it may, if he has not been sentenced, sentence him or make any other lawful disposition of the case, and if he has been sentenced, it may continue or revoke the suspension of the execution of his sentence. If such suspension is revoked, the sentence shall be in full force and effect" (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 267.

"Relative to the Punishment of certain motor vehicle crimes" (takes effect Sept. 1, 1926. See Chap. 296.).

Chapter 271—Limiting Power of District Courts as to Probation, etc.

Limits the power of District Courts to place on probation, suspend sentence or file complaints in cases where it appears that the defendant has been previously convicted of any felony. In regard to filing this law provides "Subject to any other provisions of law relative to the filing of complaints for particular crimes, District Courts may place on file any complaint in a criminal case other than a complaint for the commission of a felony issued against a person who appears previously to have been convicted of a felony or previously to have had a complaint for felony placed on file" (takes effect Sept. 1, 1926. See Ch. 296.).

Chapter 285—District Court Judges in the Superior Court.

Extends until July 1st, 1927, the law providing for the trial or disposition of certain criminal cases by District Court judges sitting in the Superior Court.

Chapter 311—Injuring Shrubs, etc.

Relates to civil and criminal liability for injuries to shrubs, plants, trees and fixtures of ornament or utility. "Chapter eighty-seven of the General Laws is hereby amended by striking out section twelve and inserting in place thereof the following:—*Section 12.* Whoever wantonly injures, defaces or destroys a shrub, plant or tree, or fixture of ornament or utility, in a public way or place or in any public enclosure, or negligently or wilfully suffers an animal driven by or for him or belonging to him to injure, deface or destroy such shrub, plant, tree or fixture, shall be punished by a fine of not more than five hundred dollars, and shall in addition thereto be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act. Whoever by any other means negligently or wilfully injures, defaces or destroys such a shrub, plant, tree, or fixture shall likewise be liable to the town or any person for all damages to its or his interest in said shrub, plant, tree or fixture caused by such act."

Chapter 320—More Information as to Records.

Provides for fuller information of the court as to prior criminal records before fixing bail, or disposition of cases by sentence, placing on file, or probation and specifies more fully the duties of probation officers and other officials in regard to such records.

Chapter 329—Expediting Criminal Appeals.

Prevents delay in the reading of appeals and exceptions in criminal cases. The act provides that the proceedings in any felony case may be taken stenographically and in case of appeal sent up on the typewritten transcript as in murder or manslaughter cases

under the act of 1925. It also provides that all such criminal cases thus appealed shall be entered by the clerk within ten days at the next law sitting of the full bench either for the county in which the case is pending or for the Commonwealth at Boston, whichever comes first. It also provides that exceptions in any other criminal case in any county may by order of a justice of the Superior Court be entered at a sitting of the court for the Commonwealth in Boston instead of waiting for the next sitting of the full bench for the county in which the case arises.

[CHAP. 340.]

AN ACT FURTHER REGULATING BAIL IN CRIMINAL CASES.

Be it enacted, etc., as follows:

SECTION 1 strikes out G.L. c. 276 § 61B. inserted by St. 1922 c. 465 and substitutes:—*Section 61B.* Any person proposing to become bail or surety in a criminal case for hire or reward, either received or to be received, and any person becoming bail or surety in a criminal case after having become bail or surety in criminal cases on more than three separate occasions in any twelve months' period, shall be deemed to be a professional bondsman and shall not be accepted as bail or surety until he shall have been approved and registered as a professional bondsman by the superior court or by a justice thereof. Such approval and registration may be revoked at any time by such court or a justice thereof, and shall be revoked in case such a bondsman fails for thirty days after demand to satisfy in full a judgment recovered under section seventy-four or a new judgment entered on review under section seventy-six. The district attorney or prosecuting officer obtaining any such judgment which is not satisfied in full as aforesaid shall, forthwith upon the expiration of such period of thirty days, notify in writing the chief justice of such court. All professional bondsmen shall be governed by rules which shall be established from time to time by the superior court. Any unregistered person receiving hire or reward for his services as bail or surety in any criminal case, and any unregistered person becoming bail or surety in criminal cases after having become bail or surety in criminal cases on more than three separate occasions in any twelve months' period, and any person herein defined as a professional bondsman violating any provision of the rules established hereunder for such bondsmen, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. The provisions of this section shall not apply to surety companies.

SECTION 2 substitutes a new *Section 74.* If the penalty of a recognizance of a party or witness in a criminal prosecution is adjudged forfeited, the court may render judgment, upon such terms as it may order, against the principal or surety, or both, for the whole of the penalty with interest, or, in its discretion, for

a part thereof, upon the filing in the case of a certificate of the district attorney or prosecuting officer stating that the interests of justice would be furthered thereby and setting forth specifically the reasons therefor; and no person shall, on behalf of the commonwealth, accept in satisfaction of any such judgment or any new judgment entered on review under section seventy-six any sum less than the full amount thereof.

SECTION 3 adds to § 61 as amended by St. 1922 c. 465 § 1 the following new paragraph:—On the second Monday of each calendar month, every person taking bail out of court shall transmit to the chief justice of the superior court a written statement setting forth the names and addresses of all persons accepted by him as bail or surety in criminal cases during the preceding calendar month.

SECTION 4. All registrations as professional bondsmen in courts other than the superior court are hereby annulled.

SECTION 5. This act shall take effect on the first day of September of the current year. *Approved May 11, 1926.*

[CHAP. 00.]

AN ACT REGULATING THE SALE, RENTAL AND LEASING OF CERTAIN FIREARMS AND PROHIBITING LOANS OF MONEY THEREON.

[RESOLVES, CHAP. 37.]

RESOLVE REQUESTING AN INVESTIGATION BY THE JUDICIAL COUNCIL RELATIVE TO STATUTORY CHANGES NECESSARY TO PROMOTE THE EXPEDITIOUS DISPOSITION OF MINOR TRAFFIC AND MOTOR VEHICLE LAW VIOLATIONS.

Resolved, That the judicial council is hereby requested to investigate and consider as to what changes in the statutes may be necessary by way of promoting the expeditious disposition of minor violations of the laws relative to the operation of motor vehicles and of violations of city and town ordinances, by-laws and regulations affecting traffic, and also as to the subject matter of senate documents one hundred and eighty-eight and two hundred and twenty-eight and house document five hundred and five of the current session, and to include its recommendations in relation to the foregoing subjects, and drafts of such legislation as may be necessary to give effect to the same, in its annual report for the current year. *Approved April 28, 1926.*

Note.

Suggestions in regard to this matter may be sent to F. W. Grinnell, Secretary of the Judicial Council, 60 State St., Boston. Pages 30–31 of the First Report of the Judicial Council (reprinted in Quarterly for November 1925) may well be read in this connection.

EDITORIAL COMMENTS ON THE WHOLE SITUATION.

Mr. Dooley once said, "There's no news in bein' good." We would all do well to remember this when reading the newspapers and we should be grateful to the Judiciary Committee of the legislature for "keeping their shirts on" and reminding us that the orderly, unadvertized disposition of over 3,000,000 criminal cases in a period of fifteen years by the courts of Massachusetts is more important for us to remember than the much-advertized newspaper accounts of occasional mistakes, failures or miscarriages of justice.

Let each critic of the courts put himself in the position, let us say, of a fair and experienced judge of the Superior Court who has been administering the criminal law during the past few years. Probably he has disposed of, by sentence or otherwise, some thirty thousand cases or thereabouts of every variety of offence. Because of the fact that the disposition of cases on pleas of guilty, etc., came before him, it is probable that he disposed in one way or another of some of the cases of which complaints have been made to the attorney general. It is quite possible that he may have made mistakes in disposing of some such cases. A good judge is the last man to consider himself infallible and would be the first to say, "Of course I have made mistakes in some cases."

But what of it? Does the fact that such a judge makes a number of mistakes in disposing of thousands of cases in the course of several years indicate that the courts are breaking down? How many men in the community would have the sustained judicial capacity to keep their judgment sound all the time day after day in a criminal court room for three years?

Perhaps a reading of the utterly conflicting views in the various papers collected in this number may make men a little more uncertain as to what is the best remedy and a little more receptive to the doubts as well as to the suggestions of those who have had long experience at close range in responsible positions with the problems which have been suddenly elevated into public notice to an exaggerated extent.

The movement in favor of a closer study of judicial administration and procedure and other connected administrative problems has been gradually growing for the past fifteen years or more all over the country. There is no news about it to those who have followed the discussions and have been trying to form some responsible judgment about some of the questions during that period. The

man who probably contributed more than any other to start this movement was Roscoe Pound when he delivered his address before the American Bar Association in 1908, on "The Causes of Popular Dissatisfaction with the Administration of Justice." This is not said for the purpose of putting Dean Pound on a pedestal and regarding him as an "oracle." We do not always agree with his views on all subjects, but the fact is mentioned because we can get things in better perspective if we know something about the earlier history of the discussion. When Dean Pound delivered that address in 1908, he shocked the sensibilities of some conservative older leaders of the bar but, since that time, there has been a constantly increasing movement of the bar along the lines which he suggested of studying administrative methods and procedure. The general public, however, and many members of the bar, have paid little attention to this movement until a certain number of dramatic incidents attracted popular attention and excited popular imagination into a state of apprehension.

Some men feel, naturally enough, that the newspaper editors have assumed a very serious responsibility and have done much harm by overemphasizing the "crime stuff" to such an extent as to throw all the sound work of our Massachusetts Courts into the background. We are not disposed to berate the newspapers for printing the "news," but there is no use in blinking the fact that it has been a bit overdone, that it is not fair to the Massachusetts Courts, and that thisoveremphasis tends to obstruct the interests of justice and make the work of all our best and hardest working judges and other officials harder. While we are optimistic enough to believe that the results of the agitation and the discussions of "Crime Week" will be healthy in the long run, we think the newspaper editors and well-meaning critics in the community should remember that it is possible to undermine the confidence even in the best judicial system to such an extent as to seriously injure the interests of the people of the Commonwealth. We have had the agitation—we have had the "crime hearings" which indicate pretty clearly that, whatever our shortcomings, Massachusetts and Boston are better off than many, if not all, the other states and large cities. It is time to cheer up—to change the tune—to make the best of what we have—to thank God it is as good as it is—and to do some quiet thinking as to how to improve it.

The reaction against the brutality of European punishments and the public state of mind which tolerated them was lead by

Montesquieu and the Marquis of Beccaria in the Middle of the 18th century. Beccaria was inspired by Montesquieu and in turn inspired Voltaire and Bentham. Howard's personal investigations and reports and Samuel Romilly's sustained parliamentary efforts finally led to more general and civilized common sense. The story of this influence in Massachusetts and that of Judge Thacher, of the earlier Boston Municipal Court, in starting the probation practice as a judicial experiment between 1823 and 1840 long before the statutory system of the '70's, was told in the QUARTERLY for August, 1917, referred to in the introductory statement in this number.

The fact is that we are in a state of transition from 19th to 20th century methods and practices made necessary by a change in conditions. It is not an easy process. It requires hard thinking of the kind that has characterized the transitions of the past in Massachusetts. Fortunately the thinking in the past has saved us from some of the mistakes which have occurred elsewhere.

As to the acts passed by the legislature, most of them seem to be steps in advance. As to chapter 266 relating to arrest of persons while on probation and chapter 271 limiting the power of District Courts to place on file, place on probation and suspend sentence—while they have the appearance of protecting the community, there were serious doubts among experienced administrators whether they would not result in practice in more delays and congestion by appeals and thus cause new difficulties as well as some injustice. Section 3 of Chapter 340 providing for monthly returns "of persons accepted as bail or surety" to the chief justice of the Superior Court, seems to impose a burden of record keeping without any provision for meeting it. There are doubtless other administration details in some of the acts which were not fully thought out. We shall learn by experience how they work in practice.

F. W. GRINNELL.